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Supreme Court of the United States

OCTOBER TERM, 1958

No. 49

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, ET AL., PETITIONERS,

vs.

REVEL OLIVER, A. C. E. TRANSPORTATION COMPANY, INC., AND INTERSTATE TRUCK SERVICE, INC.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF OHIO AND THE COURT OF APPEALS OF THE
STATE OF OHIO, NINTH JUDICIAL DISTRICT**

**PETITION FOR CERTIORARI FILED APRIL 16, 1958
CERTIORARI GRANTED MAY 26, 1958**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

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[fol. A]

IN THE COURT OF COMMON PLEAS

Case No. 196714

PETITION—Filed: January 20, 1955

REVEL OLIVER
1152 Packard Drive
Akron, Ohio

And all other parties similarly situated and too numerous
to name individually, Plaintiffs,

vs.

ALL-STATES FREIGHT, INC.
1250 Kelly Avenue
Akron, Ohio

MOTOR CARGO, INC.
700 Carroll Street
Akron, Ohio

ROADWAY EXPRESS, INC.
147 Park Street
Akron, Ohio

YANKEE LINES, INC.
1400 E. Archwood Avenue
Akron, Ohio

OVERLAND TRANSPORTATION, INC.
184 Massillon Road
Akron, Ohio

A.C.E. TRANSPORTATION COMPANY, INC.
241 James Street
Akron, Ohio

AETNA FREIGHT LINES
Warren, Ohio

SHEFFIER HIGHWAY EXPRESS
42 Heaton Avenue
Niles, Ohio

J. MILLER TRUCKING Co.
6600 Grant Street
Cleveland, Ohio

LAKE SHORE MOTOR FREIGHT, INC.
1730 Rockwell Street
Cleveland, Ohio

[fol. B]

GLENN CARTAGE Co.
Girard, Ohio

W. A. HARSHMAN TRUCKING COMPANY
Niles, Ohio

McCULLOUGH TRANSFER
Youngstown, Ohio

H. L. COOK, dba
COOK MOTOR LINES
144 N. Union Street
Akron, Ohio

DIXIE-OHIO EXPRESS, INC.
237 Fountain Street
Akron, Ohio

MORRISON MOTOR FREIGHT, INC.
408 Wellington Street
Akron, Ohio

AKRON-CHICAGO TRANSPORTATION Co., INC.
347 W. Thornton Street
Akron, Ohio

SNYDER BROS. MOTOR FREIGHT
363 Stanton Avenue
Akron, Ohio

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
A. F. of L.
2070 East 22nd Street
Cleveland, Ohio

**THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,**

A. F. of L. Local No. 377

**Rayon Avenue
Youngstown, Ohio**

FREIGHT DRIVERS LOCAL NO. 24

**348 E. South Street
Akron, Ohio**

**KENNETH BURKE
349 East South Street
Akron, Ohio**

[fol. C]

WENHAM TRANSPORTATION, INC.

**2723 Orange Avenue
Cleveland, Ohio**

P. C. & E. TRUCK LINES, INC.

**2723 Orange Avenue
Cleveland, Ohio**

THE CENTRAL TRANSIT, INC.

**1277 East 40th Street
Cleveland, Ohio**

WESTERN EXPRESS, INC.

**1277 East 40th Street
Cleveland, Ohio**

CLEVELAND CARTAGE CO.

**1277 E. 40th Street
Cleveland, Ohio**

C.A.B.Y. TRANSPORTATION CO.

**5601 Hough Street
Cleveland, Ohio**

H. J. HALL TRUCKING, INC.

Wadsworth, Ohio

B & F TRANSFER CO.

**1221 E. Bowman Street
Wooster, Ohio**

4
GAFFNEY MOTOR FREIGHT CO.
307 N. Mt. Pleasant Street
Lancaster, Ohio

E. H. SCHLAIRET TRANSFER COMPANY
409 W. Gambier
Mt. Vernon, Ohio

SUBURBAN MOTOR FREIGHT, INC.
908 West 3rd Avenue
Columbus, Ohio

B & N TRANSPORTATION, INC.
32 N. Main Street
Columbiana, Ohio

SAUNDERS CARTAGE, INC.
1465 Water Court, SE
Canton, Ohio

C. F. & L. Lines, Inc.
285 Mt. Vernon Avenue
Columbus, Ohio

[fol. D]

CLEVELAND-PITTSBURGH FREIGHT LINES, INC.
3515 Lakeside Avenue
Cleveland, Ohio

WILSON MOTOR LINES, INC.
2179 W. 3rd Street
Cleveland, Ohio

LIBERTY HIGHWAY, INC.
211 Lucas Street
Toledo, Ohio

MOHAWK MOTOR, INC.
40 Harrison Street
Tiffin, Ohio

COMMERCIAL MOTOR FREIGHT, INC.
525 Cleveland Avenue
Columbus, Ohio

TRUCK DRIVERS, LOCAL 348
171 South Forge Street
Akron, Ohio

GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS,

Local 214
209 East Main Street
Alliance, Ohio

TEAMSTERS, CHAUFFEURS AND HELPERS LOCAL 918

1724 Prospect Road
Ashtabula, Ohio

BUS, SALES, TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS,
LOCAL 637

329 Masonic Temple
Zanesville, Ohio

GENERAL TRUCK DRIVERS AND HELPERS, LOCAL 92

307 S. Market Avenue
Canton, Ohio

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,
LOCAL 143

3103 Walnut Street
Portsmouth, Ohio

TRUCK DRIVERS, CHAUFFEURS AND HELPERS, LOCAL 100

217 W. 12th Street
Cincinnati, Ohio

[fol. E]

TRUCK DRIVERS, LOCAL 407

2070 East 22nd Street
Cleveland, Ohio

TRUCK DRIVERS LOCAL 413

233 S. High Street
Columbus, Ohio

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL 948

Box 281
Coshocton, Ohio

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS, LOCAL 957

9½ Washington Street
Dayton, Ohio

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL 475
 851 Ohio Avenue
 East Liverpool, Ohio

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
 Local 571
 404 Masonic Temple
 Elyria, Ohio

CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL 625
 1081½ E. State Street
 Fremont, Ohio

and

TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL 908
 799 W. Wayne Street
 Lima, Ohio

Defendants.

1. For his cause of action herein, plaintiff says that he is the owner of tractors and trailers which he leases to and one of which he drives under lease with The A.C.E. Transportation Company, one of the defendants herein, and for a considerable period of time has been operating the same in the service of the said defendant pursuant to a written lease contract between the plaintiff and said defendant, and [fol. F] that plaintiff maintained at his expense said equipment in good repair and first-class operating condition, paid for the expenses of operation of the equipment and procured and paid for the license or permit tags necessary in the State of registration of such equipment; that plaintiff furnished fire, theft and collision insurance on said equipment and said plaintiff under the terms of said leasing agreement is an independent contractor.

2. Plaintiff further says in the State of Ohio there are more than four thousand (4,000) such owner-operators operating under identical or similar leases with the defendant carriers. That said equipment owned by plaintiff and these various owner-operators in Ohio has a valuation of at least Fifty Million Dollars (\$50,000,000.00) which equipment is now leased to defendants and other motor carriers. That this action is brought on behalf of all other owners of motor

freight equipment who are similarly situated with this plaintiff who are united in interest and are too numerous to mention.

3. Plaintiff and each of those similarly situated, owns one or more pieces of motor freight equipment more generally described as being a tractor, trailer or truck designed and used for the transportation of freight in commerce; and that each plaintiff leases his truck or trucks to one or more of the defendant motor carriers.

4. Plaintiff says that the defendants heretofore named as being the parties to whom the individual plaintiffs have leased motor freight equipment are motor freight companies situated in the State of Ohio and hold certificates or permits issued by the Interstate Commerce Commission and the Public Utilities Commission of Ohio, and various and sundry other public bodies authorizing and requiring them to engage in the transportation of freight among the various states of the United States and various points in the State of Ohio.

[fol. G] 5. Plaintiff says the defendants, The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F. of L. and Local No. 377, Local No. 24, Local No. 348, Local No. 214, Local No. 918, Local No. 637, Local No. 92, Local No. 143, Local No. 100, Local No. 407, Local No. 413, Local No. 948, Local No. 957, Local No. 475, Local No. 571, Local No. 625 and Local 908 are labor organizations affiliated one with the other and with the American Federation of Labor who profess to represent truck drivers employed by various companies and motor carriers throughout the State of Ohio, and the United States.

6. Plaintiff says that defendant, Kenneth Burke, is vice president and business agent of Freight Drivers Local No. 24, A.F. of L., and that he directs the affairs of the aforesaid labor organizations within the City of Akron and that he is so duly authorized to represent said Union.

7. Plaintiff further says that there are many members of the aforementioned labor unions who are unknown to the plaintiff and if known, are too numerous to be named

herein; that many more locals and affiliates of the aforesaid labor unions are acting in concert with said unions but which are unknown to this plaintiff, and if known would be too numerous to be named herein; that the questions here involved are of common and general interest to all of them; that the labor organizations named as defendants are representatives of all who are participating in the matters hereinafter alleged and the trial and the issue herein may be fairly had through these defendants.

8. Plaintiff says that on numerous and frequent occasions during the past several months, and at the present time, defendant labor organizations have by dictatorial and unilateral action and threats and by diverse other means [fol. H] and by means of a conspiracy composed of themselves and all other affiliates of said Teamsters Union and all members thereof, and by a conspiracy composed of many of the defendant motor carriers and other motor carriers in the State of Ohio, are urging, requiring and demanding that the motor carrier defendants and all other motor carriers located in the State of Ohio execute a certain contract, understanding or agreement which will require the breach, alteration or replacement in whole or in part of the leases and lease agreements now in effect between the plaintiff and those for whom this action is brought and the defendant motor carriers.

9. Plaintiff says that the said labor organizations, through the guise and pretense of negotiating a wage and labor contract, would control the leasing of all motor freight equipment with the named carrier defendants and with other carriers in the State of Ohio; that the said feigned labor agreement purports to fix the terms of rental, including compensation for the use of said equipment, the duration of said leases, to name the parties who will drive said equipment, to fix the manner and means of licensing and payment of fees due to the operation of said equipment, and to set and fix all and sundry every term of leasing and rental with respect to all of the said motor freight equipment used in the transportation and transfer of freight throughout the State of Ohio. Plaintiff says that said conspiracy to fix said rentals and leasing agreements will re-

quire that every lease and rental of motor freight equipment to motor carriers, both common, contract and private throughout the State of Ohio, shall be identical in term, duration and price.

10. Plaintiff further says that many of the named carrier defendants are engaged in said conspiracy and have agreed to violate the terms of the plaintiff's contract by substituting the terms and conditions of the leasing agreements promulgated and demanded by the defendant labor organizations.

[fol. I] 11. Plaintiff further says that unless restrained and enjoined by an order of this Court that those carrier defendants who have not so already joined into the conspiracy with said labor organizations will join into said conspiracy and unlawful restraint of trade by signing an agreement otherwise agreeing to violate the contracts of lease now in effect and the plaintiff represented herein, and substituting therefor the leasing arrangement and all of its terms and conditions promulgated by the defendant labor organizations.

12. Plaintiff says that in the event the defendants; between and among themselves in furtherance of the conspiracy heretofore alleged, and in accordance with the agreement signed or threatened to be signed by and between the defendant carriers and labor organizations, agree to the leasing terms purposed, that the plaintiff and all those for whom this action is brought will be deprived of the right and privilege of entering into leases for the employment of motor freight equipment owned by them; that the value of said equipment is greater than Fifty Million Dollars (\$50,000,000.00); that an irreparable injury will result for which there is no adequate remedy at law. Plaintiff further says that in such event he will be deprived of the free right to enter into private contracts for the leasing of said motor freight equipment; that unlawful restraint of trade will result and that the said labor organizations will have a monopoly upon the leasing of all motor freight equipment to both public and private carriers in the State of Ohio.

13. Plaintiffs alleges that the defendants are acting in such a manner as to constitute a trust within the meaning of the Revised Code, Section 1331.01, and that their acts herein alleged create and carry out restrictions in trade or commerce to prevent competition in transportation, sale and leasing of motor freight equipment, tend to fix the standard or figure whereby the price of leased equipment is [fol. J] controlled throughout the State of Ohio, and that such practices will tend to increase the price for which all motor freight equipment is leased in the State of Ohio, and that it will increase the cost of transportation and that it will preclude a free and unrestricted competition among the lessors and lessees of such equipment in such a manner that the price thereof will be controlled.

14. Plaintiff alleges that unless the defendants and each of them are immediately ordered enjoined and restrained from carrying out the terms of the contracts already executed, and from entering into such arrangements where not already executed, and from further threats, demands and coercive acts as hereinabove alleged, and are ordered to cease and desist from same, that the plaintiff and all others similarly situated will be irreparably damaged in the conduct of his individual business and in the business of all parties similarly situated as a whole, to such an extent that money damages will be totally inadequate.

Second Cause of Action

15. For a second cause of action, plaintiff adopts and reaffirms each and every allegation in the first cause of action contained as though fully rewritten herein and says that the unlawful acts of the defendants hereinabove alleged will result in loss of business in monetary damages to the plaintiff and all others similarly situated to an extent which cannot at this time be fully ascertained, but which in the aggregate will run into the thousands of dollars and will leave plaintiff's equipment standing idle, as well as the equipment of all others similarly situated, and, therefore, the amount of said damages cannot be fully stated, but that at the trial of the within matters the extent of

such damages will be fully proven on behalf of the plaintiff and all of those who may desire to become parties hereto, for each of whom a money judgment in accordance with Section 1331.08 of the Ohio Revised Code is hereby requested.

[fol. K] 16. Wherefore, plaintiff prays for relief on the first cause of action; that the named defendants and each of them and all who are acting in concert with them be temporarily and on final hearing of this action permanently ordered enjoined and restrained from carrying out the terms of any said contract heretofore signed by cancelling any existing lease now in effect by the plaintiff or any parties for whom this action is brought, or by in any other manner whatsoever altering, changing or substituting any or all parts of said lease by the terms or any term contained in the agreement or the demands of said labor organizations, and that where the demands and agreements requested and demanded by the labor organizations have not been acceded or agreed to by the defendant carriers that said carriers and labor organizations be enjoined temporarily and permanently from entering into any said contracts, agreements or understandings which will require a violation or alteration in whole or in part of any existing lease or the substitution of all or any part of the lease terms demanded by said carriers by said labor organizations and unions, and that they further be enjoined and restrained from interfering in any manner or means or by any subterfuge, violence, coercion, threats of violence, threats of coercion, intimidation from requiring, demanding, suggesting or enticing plaintiff and those with whom present existing leases are now in effect, from altering or changing any of said leases in whole or in part.

17. Plaintiff further prays upon his second cause of action that he and all others similarly situated be permitted to prove the amount of damages he and all others similarly situated has sustained by reason of said conspiracy in violation of the anti-trust laws of this State, and that he shall be awarded two-fold damages in money against the defendants as required by Section 1331.08 of the Revised Code of Ohio.

[fol. L] 18. Plaintiff prays for the costs herein expended and for such other and further relief both legal and equitable to which he may be entitled in the premises.

Stanley Denlinger, Attorney for Plaintiff.

Duly sworn to by Revel Oliver, jurat omitted in printing.

[File endorsement omitted]

[fol. M]

IN THE COURT OF COMMON PLEAS

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER—Filed.

January 20, 1955

1. Now comes the plaintiff and says that at the present time meetings are now being held by duly authorized representatives of the defendant labor organizations and representatives of the defendant motor carriers who have not heretofore entered into agreements with the union to violate the terms of plaintiff's leasing arrangements for the purpose of negotiating upon question of violating the terms of existing leasing arrangements, and that at the present time the remaining motor carrier defendants are bound by agreements with defendant labor organizations to violate the terms of the presently existing leasing agreements by substituting therefor leases and terms of leases heretofore agreed to by and between said carriers and the defendant labor organizations but that to the knowledge of this plaintiff such alterations in existing leases have not up to the present moment been made.

2. Plaintiff says that unless a temporary restraining order, without notice to the defendants, and pending the hearing on the temporary injunction, is granted the negotiations now in session and the contracts now in effect will result or threaten to result in an agreement which will require a breach of the existing leasing arrangements, and will thereby cause irreparable damage to this plaintiff and all others similarly situated.

3. Plaintiff says that said temporary restraining order is necessary in order to keep matters in status quo until [fol. N] the rights of this plaintiff and others similarly situated can be determined, and that the granting of such restraining order will cause no injury or damage whatsoever to any of the defendants.

4. Wherefore, plaintiff moves this court for a temporary restraining order, restraining the defendants and each of them from carrying out the terms of any agreement now entered into which will require the cancellation, alteration or violation of any presently existing leases or leasing arrangements in effect between the plaintiff and those for whom this action is brought and the defendant carriers, and further that those defendants who are negotiating a contract be restrained from entering into any terms which will require the violation, cancellation or alteration in any presently existing lease or leasing arrangement.

5. Plaintiff further moves the Court that reasonable bond be fixed and that said bond be approved by the Clerk of Courts.

Stanley Denlinger, Attorney for Plaintiff.

[File endorsement omitted]

[fol. O]

[File endorsement omitted]

IN THE COURT OF COMMON PLEAS

[Title omitted]

**JOURNAL ENTRY RE TEMPORARY RESTRAINING ORDER—
Filed January 20, 1955**

1. This matter came on for hearing on the motion of the plaintiff for a temporary restraining order, statements of counsel, the pleadings of the plaintiff which have been sworn to positively, and the court finds that unless restrained in accordance with the said motion plaintiff's damage will be irreparable, while the inconvenience and damage to the defendants will be non-existent or negligible.

2. It is, therefore, the order and judgment of this Court that the defendants and each of them be enjoined from

entering into any agreements one with the other or carrying out the effects or requirements or terms of any such agreement which will require the alteration, cancellation or violation of any presently existing lease or leasing arrangement now in effect by the plaintiff or any of those for whom this action is brought or any of the defendant motor carriers. That the parties be so restrained until the further order of the Court and that a copy of this order be served upon the defendants and that bond be set at \$1,000.00.

Frank H. Harvey, Judge.

[fol. P]

[File endorsement omitted]

IN THE COURT OF COMMON PLEAS

[Title omitted]

JOURNAL ENTRY RE ORDER MODIFYING TEMPORARY RESTRAINING ORDER—Filed January 28, 1955

This cause came on for hearing upon oral application of some of the defendants, for modification of the previous order of this court, and upon consideration thereof the court finds that said motion is well taken.

It is therefore ordered that the previous order of this court is modified so that defendant motor carriers and defendant union individuals and union organizations are not restrained from entering into and executing agreements between each other, which agreements resulted from negotiations recently concluded for the geographical area designated as the Central States Area, except that the prior order of this court shall remain in effect restraining the defendant motor carriers from carrying out or putting into effect, until the further order of the court, any changed conditions, terms or requirements of such agreement pertaining to owner-drivers, differing from those in effect immediately prior to the commencement of this action, which will require the alteration, cancellation or violation of any presently existing lease or leasing arrangement

now in effect between plaintiff or any of those for whom this action is brought who are domiciled in the State of Ohio, or any of defendant motor carriers.

Frank H. Harvey, Judge.

Bruce B. Laybourne, for Deft. Unions.

Stanley Denlinger, Attorney for Plaintiffs.

Buckingham, Doolittle & Burroughs, for Defendants.

[fol. Q] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS

JOURNAL ENTRY OF ORDER GRANTING EXTENSION TO CERTAIN
DEFENDANTS TO PLEAD—Filed February 16, 1955

On oral motion and for good cause shown, Defendant Kenneth Burke, Defendant The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L. and Defendants Local Unions No. 377, 24, 214, 918, 637, 92, 100, 407, 413, 948, 957, 475, 571, 625 and 908 are hereby granted until April 1, 1955, leave to move, demur, move to quash service of summons or otherwise plead in this cause.

Russell W. Thomas, Judge.

[fol. R]

IN THE COURT OF COMMON PLEAS

[Title omitted]

MOTION TO STRIKE AND TO MAKE MORE DEFINITE—
Filed Mar. 30, 1955

Now come the Defendants Local Unions No. 377, 24, 214, 918, 637, 92, 100, 407, 413, 948, 957, 475, 571, 625, and 908 and Defendant Kenneth Burke and move the Court for an order requiring the Plaintiff:

(1) To strike from Paragraph 1 of his petition the words "in good repair and first-class operating condition".

(2) To strike from the Second Paragraph of his petition the words "and other motor carriers".

(3) To strike from Paragraph 8 of his petition the words "dictatorial" and "unilateral".

(4) To make Paragraph 8 of his petition definite and certain by requiring him to set forth in detail the "diverse other means", and to set forth the facts which create the "conspiracy" complained of in said paragraph.

(5) To strike from Paragraph 9 of his petition the words "through the guise and pretense of negotiating a wage and labor contract"; and to strike from said paragraph the word "feigned".

(6) To strike from the petition of the Plaintiff the word "conspiracy" in all paragraphs subsequent to Paragraph 8, unless the details and facts relating to said alleged conspiracy are set forth in detail by the Plaintiff.

(7) To strike from Paragraph 13 of Plaintiff's petition the words "Plaintiff's allege that the Defendants are acting in such a manner as to constitute a trust within the meaning of the Revised Code Section 1331.01".

(8) To strike Paragraphs 15 and 17 from Plaintiff's petition.

David Previant, Milwaukee, Wis., Robert C. Knee, Dayton, O., Attorneys for Defendant Unions making this Motion, and for Kenneth Burke.

Bruce B. Laybourne, Atty.

[fol. S]

B R I E F

In support of (1) of Defendant's Motion, it is submitted that the question of the condition of Plaintiff's equipment is immaterial and irrelevant so far as this cause is concerned and should be stricken by the Court.

In support of (2) of Defendant's Motion, Defendants call the attention of the Court to the fact that there are numerous motor carrier Defendants in this case, and that any relief granted by the Court could apply only to these Defendants and not generally to any companies which might be operating equipment as common carriers. Therefore, the words "and other motor carriers" should be stricken since the Plaintiff has no right to interject testimony relative to any companies other than those made Defendants herein.

In support of (3) of Defendant's Motion, it is submitted that the words "dictatorial" and "unilateral" indicate conclusions of the pleader and do not in any manner describe the situation, but merely tend to act as inflammatory matter, which should be stricken.

The words "through the guise and pretense of negotiating a wage and labor contract", which are the subject of (5) of Defendant's Motion set forth a conclusion and are immaterial and irrelevant. The word "feigned" is another word of conclusion, inflammatory in nature, and is not descriptive in any manner of evidential facts. Therefore, Defendants request that these words be stricken from the petition.

In support of (6) of Defendant's Motion, it is submitted that Plaintiff alleges a conspiracy between and among the Defendants but does not set forth any facts which would indicate that such a conspiracy exists. Defendants request that the Plaintiff be required to make his petition definite and certain by setting forth these facts, and in the event that he does not do so, Plaintiff then asks that the word "conspiracy" be stricken wherever it appears in the petition, which request is also made in (7) of Defendant's Motion.

With respect to (8) of Defendant's Motion, Defendants wish to call the Court's attention to the fact that Plaintiff's second cause of action is based on a claim for damages resulting to the Plaintiff and others similarly situated resulting from action which Plaintiff claims the Defendants attempted to take. It should be clear to the Court that no damage could result to the Plaintiff until such time as the action which he complains of has been taken,

[fol. T] and since the Defendants have been temporarily enjoined from taking such action, and since such action could not be taken until this case is determined, it must be apparent that the Plaintiff can suffer no damage assuming that he is justified in his complaint. Therefore, the Defendants request that the second cause of action and the prayer relating thereto be stricken from the petition since no proof could be made of the allegations contained therein.

Respectfully submitted,

_____, Attorneys
for Defendant Unions and Kenneth Burke.

[File endorsement omitted]

[fol. U]

IN THE COURT OF COMMON PLEAS

[Title omitted]

ANSWER OF DEFENDANT, A.C.E. TRANSPORTATION COMPANY,
INC.—Filed June 3, 1955

Now comes the defendant, A.C.E. Transportation Company, Inc., and says:

1. That it is a corporation organized and existing under the laws of the State of Ohio, and having its principal office and place of business in the City of Akron, Ohio;

2. That it is a common carrier of property, operating pursuant to certificates of public convenience and necessity issued by the Interstate Commerce Commission and by various States of the United States of America;

3. That it leases certain of its motor vehicles from the owners thereof by written leases, the terms of which require the lessor to furnish such equipment with drivers, to pay all operating expenses and to accomplish a transportation service for this defendant;

4. That the lessors of such equipment bear the relationship of independent contractor to this defendant;

5. That unless restrained by order of this Court, it has committed itself to enter into a contract with the appropriate Local of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., which contract will be identical with that signed by all other common carriers by motor vehicle engaged in similar business and domiciled in the State of Ohio; and

6. That such agreements will require that defendant's contractual relationships with its lessors of motor vehicles be changed.

Further answering, this defendant, for lack of knowledge, denies each and every allegation contained in plain-[fol. V] tiffs' petition not herein admitted or qualified.

Wherefore, having fully answered, this answering defendant prays for such relief to which it may be entitled, in law or in equity.

Brouse, McDowell, May, Bierce & Wortman, By
Charles R. Iden, Of Counsel, Attorneys for the
defendant, A.C.E. Transportation Company, Inc.

Duly sworn to by, jurat omitted in printing.

[File endorsement omitted]

[fol. W]

IN THE COURT OF COMMON PLEAS

[Title omitted]

ANSWER OF DEFENDANTS, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF
AMERICA, ETC., ET AL.—Filed June 29, 1955

Now come the defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., and Locals numbered 377, 24, 348, 214, 918, 637, 92, 143, 100, 407, 413, 948, 957, 475, 571, 625, 908 and Kenneth Burke, by their attorneys, and for answer to the plaintiff's Petition and on each cause of action set up therein admit, deny and plead as follows:

(1) Deny sufficient information to form a belief as to paragraphs 1 and 3 and therefore put the plaintiff to his proof.

(2) Deny the allegations in paragraph 2, and especially deny that the more than four thousand owner-operators are operating under identical or similar leases and also deny that the interests of this plaintiff are united with the interests of the other individual owner-operators.

(3) Admit the allegations in paragraphs 4, 5, and 6. [fol. X] (4) Deny the allegations in paragraph 7, and especially deny that the named defendants are representatives of any local unions for purposes of this action not mentioned in the Petition as parties defendants.

(5) Deny the allegations in paragraph 8, and especially deny that the defendant labor organizations have conspired with other labor organizations or with defendant motor carriers or other motor carriers for the purposes of dictating or accomplishing by threats the execution of any contract requiring the breach, alteration or replacement of any contract in whole or in part to which the plaintiff is a party, or for any other purpose.

(6) Deny the allegations in paragraph 9, and especially deny that defendant labor organizations have executed any contract which would control the leasing of all motor freight equipment in the state of Ohio; and especially deny that defendant labor organizations entered into any conspiracy to establish identical leasing agreements covering motor freight equipment in the state of Ohio.

(7) Deny the allegations in paragraphs 10, 11, 12, 13, 14 and 15; and further answering deny each and every, all and singular the properly pleaded allegations contained in plaintiff's petition not herein admitted to be true or qualified.

Second Defense

(8) Defendants for their second defense to plaintiff's [fol. Y] Petition adopt all of the defenses contained in their first defense as though rewritten here, and say that

the plaintiff is not properly before this court as the representative of the four thousand owners of leased motor vehicles in the state of Ohio because each of these four thousand owner-operators have an individual contract to lease his motor vehicles and these private contracts are not identical, thus creating incompatible and inconsistent interests which could not possibly be adequately represented by the plaintiff in this action; that thousands of the owners of leased motor vehicles in the state of Ohio do not desire to have the legality of their private contracts litigated by the plaintiff and in fact desire to take advantage of the better contract being presented to them by the lessee of their equipment, thus demonstrating that plaintiff has no representative standing in court because of the serious division among the proposed classification on issues necessary and important to the case; that any decree entered by this court could not bind all the owners of leased motor vehicles because their interests are not joint with that of the plaintiff; that many of the owner-operators which the plaintiff is seeking to represent do not have title to their trucks and others have individual contractual provisions in their lease agreements peculiar to their own situation and thus the classification is not capable of accurate identification; that any attempt to [fol. Z] bind other owners of leased motor vehicles by a judgment in this case would deprive these persons and the defendants of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Third Defense

(9) Defendants for their third defense to plaintiff's Petition adopt all of the defenses contained in their first and second defenses as though rewritten here, and say that the defendant labor organizations are the duly authorized collective bargaining agents for many thousand employees in the Central States area, which includes the state of Ohio, and in that capacity have executed contracts with many motor carriers covering the wages, hours and working conditions of these employees.

(10) That plaintiff, as well as other owner-operators, has duly authorized the defendant labor organizations to

act as his collective bargaining agent and that pursuant to this authorization the defendants have executed contracts covering the wages, hours and working conditions of these employees.

(11) The collective bargaining contract, known as the Central States Area Over-the-Road Motor Freight Agreement, was executed on February 1, 1955 and expires on January 31, 1961 and defendants say that all the clauses contained in said contract are for the express purpose of assuring to the employees covered thereby including the [fol. AA] plaintiff, the receipt of the union-scale of wages provided therein by prohibiting the making or carrying out of any plan, scheme or device to circumvent or defeat the wage scale.

(12) Defendants further answering say that the minimum equipment rental provision contained in the collective bargaining contract in no way substantively defeats, lowers or detracts from plaintiff's take-home pay, nor do said minimum provisions substantively defeat any private contractual arrangements plaintiff claims to have with defendant transportation company.

(13) Defendants further answering say that they are required by law to bargain collectively for the benefit of all the employees they are authorized to represent, including plaintiff, and that plaintiff has ratified the collective bargaining agreement by accepting its benefits.

Fourth Defense

(14) Defendants for their fourth defense to plaintiff's Petition adopt all of the defenses contained in their first, second and third defenses as though rewritten here, and say that this court has no jurisdiction over this action because exclusive jurisdiction to resolve this controversy has been given to the National Labor Relations Board by Congress (29 U.S.C.A., Section 141 et seq.) and, in the alternative, insofar as this controversy concerns the operation of leased motor vehicles in interstate commerce, primary and exclusive jurisdiction has been given to the Interstate Commerce Commission by Congress (49 Stat. [fol. BB] 543) and any assumption of jurisdiction by this

court would violate Article I, Section 8, and Article VI, Section 2, of the United States Constitution.

(15) That the defendant motor carriers are subject to the jurisdiction of the Interstate Commerce Commission, which regulatory agency has primary and exclusive jurisdiction to entertain this matter; that the conduct of the defendants in executing collective bargaining agreements does not constitute a violation of Section 1331.01, Revised Code, or any other provision of Ohio law.

Fifth Defense

(16) Defendants for their fifth defense to plaintiff's Petition adopt all of the defenses contained in their first, second, third and fourth defenses as though rewritten here, and say that Section 1331.01, Ohio Revised Code, is inapplicable because the federal Congress has, in language similar to the Ohio Code, regulated the conduct involved in this case (15 U.S.C.A., Section 1 et seq.) and has thereby closed this field to state regulation.

Sixth Defense

(17) Defendants for their sixth defense to plaintiff's Petition, adopt all of the defenses contained in their first, second, third, fourth and fifth defenses as though rewritten here, and say that this court has no jurisdiction over whatever portion of the subject matter involved in this controversy as it affects intra-state commerce because exclusive jurisdiction has been given to the Ohio Public Utilities Commission under the Ohio Motor Carriers Act, Section 4901, 01-4901.24, of the Revised Code of Ohio.

(18) Wherefore, the defendants having fully and adequately answered, pray that plaintiff's petition be dismissed, and that they go hence with their costs.

Radway, Goldberg & Previant, Robert C. Knee,
Bruce B. Laybourne, Attorneys for defendants.

*Duly sworn to by Kenneth Burke and Robert C. Knee,
jurats omitted in printing.*

[fol. EE]

[File endorsement omitted]

[fol. 1]

IN THE COURT OF COMMON PLEAS
STATE OF OHIO, SUMMIT COUNTY

No. 196714

Revel Oliver, Plaintiff,

vs.

All States Freight, Inc. et al., Defendants.

Bill of Exceptions

APPEARANCES:

Stanley Denlinger, Esq., counsel on behalf of Plaintiff.

Hugh S. Jenkins, Esq., 50 W. Broad Street, Columbus, Ohio, counsel on behalf of Aetna Freight Lines, et al.

Vernon L. Stouffer, Esq., 50 W. Broad Street, Columbus, Ohio, counsel on behalf of Gaffney Motor Freight, Inc.

John P. McMahon, Esq., 44 East Broad Street, Columbus, Ohio, counsel on behalf of W. A. Hershman, Inc., et al.

Charles H. Ayers, Esq., 512 Union Commerce Bldg., Cleveland, Ohio, counsel on behalf of The Cleveland, Columbus & Cincinnati Highway, Inc., et al.

Robert C. Knee, Esq., 913 Winters Bank Bldg., Dayton, Ohio, counsel on behalf of Unions.

David Previant, Esq., 212 W. Wisconsin Avenue, Milwaukee, Wisconsin, counsel on behalf of Unions.

Bruce B. Laybourne, Esq., Akron, Ohio, counsel on behalf of Unions.

Ray E. Schmidt, Esq., 913 Winters Bank Bldg., Dayton, Ohio, counsel on behalf of Unions.

Caul L. Allebaugh, Esq., Steubenville, Ohio, counsel on [fol. 2] behalf of Braun Motor Express, Inc.

Ben H. Beeman, Esq., East Liverpool, Ohio, counsel on behalf of Chicago-Pittsburgh Express, Inc., et al.

Rice C. Hershey, Akron, Ohio, counsel on behalf of Fischbach Trucking Co.

Charles R. Iden, Esq., Akron, Ohio, counsel on behalf of A.C.E. Transportation Co., Inc., et al.

Victor K. Darer, Esq., 1820 N.B.C. Bldg., Cleveland, Ohio, counsel on behalf of B. C. & E. Truck Lines, Inc.

Kenneth M. Petri, Esq., Professional Bldg., Galion, Ohio, counsel on behalf of F. J. Egner & Son, et al.

Robert W. Bought, Esq., 1126 Terminal Tower, Cleveland, Ohio, counsel on behalf of Wenhan Transportation, Inc.

Guy Hammond, Esq., Akron, Ohio, counsel on behalf of Geo. Rimes Trucking Co.

Herman E. Rabe, Esq., Akron, Ohio, counsel on behalf of All States Freight, Inc., et al.

Taylor C. Burneson, Esq., 3510 LeVeque-Lincoln Tower, Columbus 15, Ohio, counsel on behalf of Mohawk Motor, Inc., et al.

Be It Remembered that upon the trial of the above entitled case on the 20th day of February 1956, being a day in the January Term, 1956, of the Court of Common Pleas of Summit County, Ohio, before the Honorable Stephen C. Colopy, Judge presiding, the following proceedings were had:

The Court: Mr. Denlinger, you necessarily will speak [fol. 3] for the Plaintiff. You want to outline your claims at this time?

PLAINTIFF'S OPENING STATEMENT

Mr. Denlinger: I will be very happy to do so.

The Court: All right. I would appreciate it if you would keep your statement brief and right to the point.

Mr. Denlinger: If your Honor please, and gentlemen representing the Defendants here, this is an action brought by Revel Oliver as the owner and operator of motor trucks and trailers for two common carrier Defendants in this proceeding, the A.C.E. Transportation Company and Interstate Truck Service.

The action is against a great number of common carriers in the State of Ohio including these two Defendants I have mentioned, and officers and members of the locals of the Teamsters Union, a voluntary association.

The purpose is to restrain these Defendants from continuing certain acts, arrangements, combinations, practices, and in particular a restraining order against the Defendants from enforcing certain terms and conditions of a contract which we shall refer to as the Union Contract, but is designated on the leaf of the contract as the "Central States Area Over-the-Road Motor Freight Agreement" with Ohio rider for February 1, '55, to January 31, '61. That contract is described in the petition and we have alleged it to be in violation of Revised Statutes 1331.01, sometimes referred to as the Valentine Act. Section 1331.01, your Honor, reads as follows:

"As used in sections 1331.01 to 1331.14 inclusive, of the [fol. 4] Revised Code.

(A) 'Person' includes corporations, partnerships, and associations existing under or authorized by any state or territory of the United States, or a foreign country.

(B) 'Trust' is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

(1) To create or carry out restrictions in trade or commerce;

(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;

(3) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity;

(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or

established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state;

(5) To make, enter into, execute, or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which [fol. 5] they shall in any manner establish or settle the price of an article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected.

A trust as defined in division (B) of this section is unlawful and void."

Now at this time, your Honor, I would like to outline the allegations of the petition sufficient for an understanding of the issues and the particular answers.

Our petition is drawn on the claim that Revel Oliver as an owner and operator of motor equipment used in the transportation business has been fixed by the contract known as the "Central States Area Over-the-Road Motor Freight Agreement" or Union Contract, a contract to which he was not a party, and to the terms and conditions of which he has never assented; that prior to the execution of this contract he was under contract of lease with the two carrier Defendants here mentioned before as A.C.E. and Interstate Trucking Service; and that this union contract negotiation in Chicago in January 1955, and particularly Section 32 thereof, and other parts of the agreement which we shall refer to later, your Honor, fixes and determines a minimum [fol. 6] by which all leasors (sic) of equipment for the busi-

ness of motor truck transportation in Ohio with all the carriers is binding upon all carriers and an attempt to bind all people who own and lease their equipment.

We have followed the statute relative to damages arising from a violation of the Valentine Act. We shall explain to your Honor later the basis of that claim, and it is an assertion largely against the Defendant unions.

Now, our claim boiled down is that this contract entered into dated February 1, 1955, in and of itself is an agreement and combination in violation of 1331.01, and secondly, that this Plaintiff has been damaged by reason of the execution and fulfillment of that agreement in certain respects.

If your Honor please, the Defendants here are numerous, but when boiled down, the issue does not become complicated. For example, some of the carriers admit that they lease equipment, deny the balance of the allegations, and all particularly deny that they are any part of any combination in restraint of trade. Other of the Defendants Carriers admit the use of both company or carrier owned equipment and leased equipment, but deny the other allegations, particularly that which involves any combination and restraint of trade.

The unions deny that this contract is in restraint of trade and introduce a defense that I think only one or two other carriers offered, the defense of the lack of jurisdiction of this court to hear this case. They plead that by special [fol. 7] defense. So I think we may sum this down, your Honor, to the receiving in this court of this contract, its particular operation with reference to the Plaintiff, and determine whether or not this contract is in violation of 1331.01, and if any damages have flowed from that agreement to this Plaintiff.

Now, we think, your Honor, that that substantially brings the pleadings to date.

Now, although the answer made through Kenneth Burke, the business agent in Akron Local No. 24 raises the question of the jurisdiction of this court to hear this proceeding, it is to be noted that no effort has heretofore been made by the unions or the carriers to remove this cause to the U. S. District Court based on any federal question or on allega-

tions of the petition from which a federal question might reasonably be inferred.

It is also to be noted that on the 20th of January 1955, Honorable Judge Harvey then sitting for the hearing of equity matters granted a temporary injunction and that order was rather short, and enjoined the enforcement of the terms of this contract as it might apply to the leases then in existence. The order is short and I will read it to your Honor.

"1. This matter came on for hearing on the motion of the Plaintiff for a temporary restraining order, statements of counsel, the pleadings of the Plaintiff which have been sworn to positively, and the Court finds that unless restrained in accordance with the said motion Plaintiff's [fol. 8] damage will be irreparable, while the inconvenience and damage to the Defendants will be non-existent or negligible.

"2. It is, therefore, the order and judgment of this Court that the Defendants and each of them be enjoined from entering into any agreements one with the other or carrying out the effects or requirements or terms of any such agreement which will require the alteration, cancellation, or violation of any presently existing lease or leasing arrangement now in effect by the Plaintiff or any of those for whom this action is brought or any of the Defendant Motor Carriers. That the parties be so restrained until the further order of the Court and that a copy of this order be served upon the Defendants and that bond be set at \$1,000."

That order was not substantially modified, but it was altered—not altered but after oral application this was the final interlocutory order:

"This cause came on for hearing upon oral application of some of the Defendants, for modification of the previous order of this Court, and upon consideration thereof the Court finds that said motion is well taken.

"It is therefore, ordered that the previous order of this Court is modified so that Defendant Motor Carriers and Defendant Union individuals and Union organizations are

not restrained from entering into and executing agreements between each other, which agreements resulted from negotiations recently concluded for the geographical area designated as the Central States Area, except that the prior order of this Court shall remain in effect restraining the [fol. 9] Defendant Motor Carriers from carrying out or putting into effect, until the further order of the Court, any changed conditions, terms or requirements of such agreement pertaining to owner-drivers, differing from those in effect immediately prior to the commencement of this action, which will require the alteration, cancellation or violation of any presently existing lease or leasing arrangement now in effect between Plaintiff or any of those for whom this action is brought who are domiciled in the State of Ohio, or any of Defendant Motor Carriers."

Now, none of the Defendants have questioned the order that was made as I have read it to your Honor, and we go into this hearing with Judge Harvey's order in full force and effect, and with no motion or other actions taken for any alleged violation of the Court's order.

At this time, your Honor, I would like to identify for the court the various parties to the proceeding.

The Plaintiff, Revel Oliver, is a resident of Summit County living at 210 Winchester Road, Akron. He has been in the trucking business for some twenty-two years, is married and has one child. At the present time he operates and drives one of six tractors and four trailers of a value of approximately \$45,000. He operates for the Interstate Truck Service and A.C.E. under leases with both of these companies executed long prior to the time of the contract of February 1, '55. He operates under leases which we will present to your Honor. Under the operation he pays his drivers; he hires and pays them, the social security, [fol. 10] unemployment; he furnishes the tires, oil, gas, and repairs; and he has the title of all these pieces of equipment in his name.

Just as a matter of history and not as a matter of anything to influence this Court or be a part of this proceeding, this identical question—not identical or raised in the fashion of this—was previously heard a couple of years ago by

Judge Emmons by the same parties, not this Plaintiff, but another, who after hearing the evidence the Court found that since the title of the equipment was not titled in the Plaintiff who brought the action, in the light of the Supreme Court of Ohio decision requiring you to be able to present a certificate of title to establish any interest in a motor vehicle, the fact that his title was titled in someone other than he, made him an improper party for bringing the suit, and that action after some three or four days of evidence by Mr. Knee and his associates was dismissed. That was not followed because approximately by the time that decision came out the contract then in existence was ending and the present one was in the process of negotiation. We will go further into the details of that operation when we present our evidence, but I wanted to have some identification of this Plaintiff for your Honor.

Now, the Defendant carriers are what are customarily known as common carriers, companies who by virtue of permits issued by State and Federal authorities are authorized to transport merchandise, steel, and various commodities [fol. 11]. In the course of their operation some of the Defendants own their equipment, that is, tractors, trailers, and trucks, and for their operation they employ drivers of their own to operate these pieces of equipment. Other Defendants own no equipment of their own and lease from individuals such as the Plaintiff here. This motor equipment is necessary to their operation and that is the way they operate. Other Defendants operate their business by means of both company owned and leased equipment. But the one thing common to all the Defendants is the contract covering the period from February 1, '55, to January 31, '61. They are all parties to that.

Now, the remaining Defendants are Ohio State local unions and some of their officers affiliated with and a part of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Some time prior to February 1, '55, particularly in January '55, representatives of the Teamsters Union met with the representatives of private, common, and contract carriers of Ohio and eleven other central states in Chicago, Illinois. At this conference the Plaintiff and owners of

motor equipment leased to motor carriers did not participate, and at no time has ratification or assent been given to this contract or combination concerning which we complain which we allege constitutes the making of a contract or violates the provisions of 1331.01 and tends to create a monopoly prohibited by the laws of Ohio.

At this time we wish to make it clear that the Plaintiff's [fol. 12] position does not question the right of the Defendant-carriers and the Defendant-unions to make a contract governing the wages, the hours, and conditions of the employees of the carriers and the members of the union. Our petition is directed against the provisions of this contract executed by the Defendants which provide for a fixed rate per mile for all equipment owned and driven by this Plaintiff and all other owner-drivers for the equipment owned by them and leased by them to the carriers in Ohio. We will point those specific items out in the agreement. They speak for themselves and your Honor will be asked to interpret what those provisions mean in connection with this statute.

We shall a little later go into further details of these provisions which actually fix the terms and conditions covering equipment and the price to be charged therefor as distinguished from the fixing of wages and the hours of the man.

The controversy between the parties to this suit arises mainly in these categories:

One, we claim that the contract fixes minimum prices which the carrier must pay and a minimum charge which the owners must make for the use of the equipment leased by the owner to the carrier; and second, that this contract established penalties and prohibitive restrictions on the rights of owners to lease which ultimately prevents the carriers from leasing and thus limiting the number of pieces of equipment which may be in the competitive market; and third, that these restrictions bring about a money [fol. 13] loss to all owners of equipment.

Now, while the unions here maintain that this suit—this Court is without jurisdiction to entertain this suit by reason of federal legislation and because interstate commerce is involved, we contend, your Honor, that the Defendants are

not exonerated, because they are unions, from obedience to the statutes regarding monopoly, and they were not immunized against suit by citizens vitally affected for their violation by any act of Congress.

And, furthermore, your Honor, this is not a labor dispute. Neither the allegations nor the evidence will establish that it is in any wise a labor dispute. That the labor of a human being is not an article of trade to be bartered or sold, and under our laws may be the subject of collective bargaining for the maintenance and improving of said labor, but where a human being creates capital, saves it and invests it in motor trucks and equipment which he owns and leases for a money consideration by way of percentage, tonnage or mileage, that any arrangement, combination, or contract which is created whereby competition either in the supply or the price of the use of such equipment is restrained or prevented, or if there is a tendency to do so, or whereby the free pursuit of any lawful business by this Plaintiff is restrained or restricted that that constitutes a clear violation of the Valentine Act of Ohio and acts conducted or contracts made in violation of that statute are subject to injunctive order of this Court; and that the subject matter is within your Honor's jurisdiction. [fol. 14] Now, the evidence in this case will show that prior to January 1955, the Plaintiff was engaged in the pursuit of a lawful business. He owned and operated his tractors and trailers leased to certain of the Defendants in this action. He was a member of the Teamsters Union.

In January 1955, the Central States Area Over-the-Road Agreement was made in Chicago. The unions committee was headed by Mr. James Hoffa of Detroit. The Ohio carriers represented by a committee and counsel Mr. Herman E. Rabe, O. M. Lattavo of Canton representing steel truckers.

While it may be interesting to go into details as to the form the negotiations took in Chicago to bring about this agreement called a Labor Contract, I shall not attempt to go into it and lead your Honor off the track. This contract reached deals with two subjects. First, the wages, hours, and conditions of carrier employees, a field in which carriers and unions have a perfect right in which to engage

and concerning which there is no issue in this case. But it provides secondly a fixing of price for the use of equipment creating a monopoly and interfering with the lawful pursuits of the Plaintiff in a legal business, a field in which neither the carriers, the unions, or the owner-operators have a right in which to engage, and any agreement or combination by them fixing or restricting the price for the use of equipment used in the business is illegal and void under 1331.01.

Now, the contract will be offered in evidence. Its terms will speak for themselves. We think the very words will [fol. 15] condemn the Defendants whose signatories are attached thereto, and will establish the claim of monopoly.

We shall offer testimony that this contract has uniform application throughout Ohio and covers and intends to cover all private, common, and contract carriers, exclusive of railroads and bus lines. That its enforcement by carriers has been resulting in the elimination of owner-operators from the competitive field, and that the enforcement of its provisions places an unlawful restraint upon the Plaintiff in the pursuit of his lawful business by requiring the payment for feather bedding services for which he neither contracted nor which he desires, and these unwanted services forced upon him puts a large and illegal burden upon his lawful pursuits.

That, your Honor, is substantially our case and I will answer any questions you wish. I have tried to carefully, as carefully as possible, analyze it for the bringing down to the simple issue which I have outlined to you.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: I don't suppose there is any desire that all of you attorneys representing carriers desire to speak. Can you agree among yourselves that someone may outline the claims of the carriers?

Mr. Rabe: I would like to raise a question or two that perhaps will clarify questions that may be before the Court. I would like to raise the question with Mr. Denlinger.

Number one, I think that it is his intention here on behalf of the Plaintiff to bring this action on behalf of

Mr. Oliver, and he alleges also on behalf of other owner-operators.

[fol. 16] The question I would like to ask him is: Is he bringing this action on behalf of what is known in the trade as I.T.O.'s or owner-drivers, namely, an individual who is driving a truck that he owns, and not on behalf of all owner-operators, and he may or may not drive a truck at all. Are you referring only to owner-drivers?

Mr. Denlinger: I hope I can clarify that for Mr. Rabe and any other counsel.

We are not making any claim to represent any person who is in the leasing business with any of the carriers except as that leasing is done by one who drives one of the trucks or tractors. We try to cover here that class of owner-operators who may drive one truck and own two or more other pieces of equipment, but not a leasing concern such as the Berman Trucking Company as I understand that company has made arrangements with certain of the carriers who may be Defendants in this action. We make no claim to represent them.

We are trying to cover, your Honor, those people who own a truck and drive or who owns a truck and drives even though he has two or three other pieces of equipment.

Mr. Rabe: If your Honor please, may I then ask for clarification of another point.

Since this action involves most of the trucking industry of Ohio, naturally there are all sorts of fish and fowl involved, and in view of Mr. Denlinger's opening statement that this is a matter in common regarding all the carrier-defendants that were parties to this Central States Over- [fol. 17] the-Road Agreement, I want to state that there are to my knowledge several Defendants—and perhaps others that I do not know of—carrier-defendants who are not signatories to this union contract that he is referring to.

That arises in different ways. For instance, there is a carrier that I represent, a carrier-defendant that is a dump truck operator in a southern Ohio county, and that is all they do, and, therefore, they are not an over-the-road trucking company such as envisioned by this contract. They may be parties to some other union contract that I don't know about.

Then, there are other companies. There is one that I represent that is a Defendant here that has some trucks, but is engaged in road building and they are not signatories to this contract. Again, for the same reason that they are not an over-the-road trucking company.

Perhaps there are other carrier-defendants along the same line. I know of one or two Defendants that are small truck operation, the owner of the business has one truck and he drives it himself in local hauling and things of that sort. And I just raise a question as to whether or not such companies or carrier-defendants are within the contemplation of Mr. Denlinger in this action.

Mr. Denlinger: If your Honor please, I shall be glad to answer that question.

The only contract that we claim is violative of anything is this one contract, the Central States Over-the-Road Agreement which will be offered in evidence. We do not [fol. 18] want to complicate this case with contracts of any other nature which the unions named here or members of locals may have in the State of Ohio.

I understand many carriers, maybe some of the Defendants who are signatories to Over-the-Road Agreement have local cartage contracts with local unions. There is nothing here, Herman, that any claim was made regarding contract or carrier except those companies that have signed the Over-the-Road Agreement. That is the contract and those are the parties which we claim to be concerned here with, your Honor.

Does that answer your question?

Mr. Rabe: I think that pretty well answers that. I understand then from your statement that those Defendants who may be in here who are in a set of circumstances that I previously mentioned may be dismissed from this action.

Mr. Denlinger: I would have no objection if their counsel, without the necessity of bringing in witnesses, would express that situation to your Honor, they may be disposed of. I will accept the professional word of counsel at this proceeding for that purpose.

Mr. Rabe: That does clarify the situation on several Defendants that I represent and perhaps others. I would

like to raise the third question to see if we can clear the atmosphere on that.

There are a number of Defendant-carriers who are joined here in this action who do not have owner-operator operation. In other words, they haul all their freight by virtue [fol. 19] of equipment that they own themselves, and do not at this time own any—do not operate any equipment that is operated by owner-drivers as we are talking about in this action. So I mean there are varying situations on that. Some of them at one time did have owner-operator operation. Some of them never had owner-operator or haven't had for many, many years. I am wondering under the set of circumstances whether those Defendant-companies who do not have owner-operator operation whether or not they are proper parties before the Court.

Mr. Denlinger: If your Honor please, that question was before Judge Harvey at the time this amendment was made. Our claim is that all who are signatories to this agreement, whether they now operate as such, are proper parties because of their signature to the contract.

The Court: All right. There will be no ruling made on that now.

Mr. Rabe, since you have you been on your feet and represent quite a number of motor carriers I suggest that you outline your claims.

OPENING STATEMENT BY MR. RABE FOR CERTAIN DEFENDANTS

Mr. Rabe: If the Court please, on behalf of the Defendant-carriers that I represent I wish to state this and I will make my remarks very brief because I don't think it is necessary to take up a lot of time on the matter.

In 1951, the latter part of 1951 and early '52, negotiations to the predecessor to the present union contract were carried on in Chicago on behalf of the trucking industry [fol. 20] in Ohio. Prior to that the negotiations were solely in the State of Ohio between local unions and various trucking companies, and on February 1, 1952, the predecessor contract to the present contract was entered into

by most of the trucking companies in the other states comprising this Central States area which was then, I think, eleven states or twelve states, twelve states with Ohio.

The trucking industry in Ohio by and large refused to sign that contract and they were struck by the Teamsters Union. That strike lasted for some thirty-four or five days and thereafter most of the trucking companies did sign that contract. That contract contained most of the provisions to which Mr. Denlinger refers in Article 32 of that contract.

The negotiations which were conducted and resulted in the contract that Mr. Denlinger refers to beginning February 1, 1955, were again conducted in Chicago and at that time there was no substantial change made in that article 32 relating to owner-operators. As I recall it, the only change of consequence that developed at that time was a change in the rate, an increase in the rate.

I paint that background so the Court has an understanding of exactly, briefly how this thing developed.

It is the contention of the Defendant-carriers that I represent that there was no conspiracy on their part to engage in any action in violation of the Anti-trust Law; that this contract as it was evolved in the first place was one that the carriers resisted, and they lost in the final [fol. 21] outcome of the matter and ultimately signed the contract after a strike; that the contract was renewed in substantially the same form in February 1955, except for this slight modification as to the increase in the minimum truck rental; and that they—I think the evidence will show—that they have not engaged in any conspiracy to bring about any alteration or breach of the leases involved here between the owner-drivers and the companies to whom they are leased.

The Court: Now, any of you attorneys representing carriers that wish to make a statement beyond what Mr. Rabe has stated? I assume his statement may stand for all carriers except insofar as you lawyers representing other carriers wish to assert. Any of you wish to supplement?

MOTION TO DISMISS AS TO DEFENDANT, BRAUN MOTOR EXPRESS, INC. AND RULING GRANTING SAME

Mr. Allebaugh: I represent Braun Motor Express Inc. who did not sign the green book and did not negotiate a contract until November. 22, '55, and it was a contract that is much deleted from that and does not carry the sections that have been objected to and yet we are a party to this. And in line with what Plaintiff's counsel has indicated, we would like to make a motion at this time to be dismissed.

Mr. Denlinger: Counsel has made his professional statement that they are not signatories to the one we have pleaded and does not contain the provisions regarding owner-operators. We have no objection, your Honor, to the Defendant being dismissed.

The Court: The name of your client is whom?

Mr. Allebaugh: Braun Motor Express Inc.

[fol. 22] Mr. Denlinger: That might not be listed on that original because there is a subsequent motion filed making the other parties Defendants.

The Court: Anyone object to Mr. Allebaugh being dismissed?

All right, you are out. You submit your own journal entry.

MOTION TO DISMISS AS TO DEFENDANT, B. C. & E. TRUCK LINES, INC. AND RULING GRANTING SAME

Mr. Darer: I represent B. C. & E. Truck Lines, Inc. This corporation has been dormant since 1954, and I believe I can professionally state it is not a party to that signatory agreement. Therefore, I would like to ask the Court to dismiss B. C. & E. Truck Lines without prejudice at this time.

The Court: Any objection to that?

Mr. Denlinger: No objection.

The Court: All right. You prepare your entry, likewise, and send it to Mr. Denlinger for his okay.

COLLOQUY BETWEEN COURT AND COUNSEL.

Any other attorneys who want to be heard at this moment?

Mr. Hershey: I would like to ascertain definitely whether my client Fischbach Trucking Company is a signatory. I understand if they are not they may be dismissed.

Mr. Denlinger: Certainly.

The Court: Don't you know?

Mr. Denlinger: I think he is.

The Court: Any other attorneys for carriers who want to be heard?

Mr. McMahon: I would like to hear from the counsel [fol. 23] representing the union before I make any other remarks, but I do think I would want to add to Mr. Rabe's statement that we question whether Mr. Oliver represents the clients he claims to represent.

The Court: That may be part of your opening statement. You are going to make a denial of that, that he is in here in a proper reference or representation suit?

Mr. McMahon: Yes, I would rather defer that.

The Court: Any other attorneys for carriers?

Before putting any more time on this I am just wondering, perhaps I ought to ask you attorneys. Statements have been made suggesting to me this matter may go on for a long time and maybe I ought to refer this to a referee. What do you think?

Mr. Denlinger: If your Honor please, I would state—

The Court: We have a very heavy trial docket.

Mr. Denlinger: So far as the Plaintiff is concerned, I will state to you what I stated to Mr. Knee, union's counsel before the hearing this morning. That I think so far as the Plaintiff is concerned we may very easily complete our evidence and testimony within a day, well within a day. In the other matter tried to Judge Emmons I think there was approximately three and a half days. Even with the holiday coming this week I am certain, your Honor, unless I would hear something considerably different from the carriers, from my talk with Mr. Knee, as representing the unions, that we can finish this week. And I have stated to

him as I now state to you my case in chief will take [fol. 24] less than a day as you can understand from what I have suggested we would offer.

The Court: Any of you lawyers wish to respond to my question?

Mr. Knee: In representing as one of the counsel for the unions who are Defendants in this case I agree with Mr. Denlinger.

As far as our case is concerned we shan't take more than a day to a day and a half, and I would include argument on that. And I might say to your Honor at this time, both myself and Mr. Previant from the Milwaukee Bar are committed in Washington, D. C. on a matter the beginning of next week. We, ourselves, have allotted only this week for this case.

The Court: Anyone else that feels that this case won't consume a lot of time by way of taking evidence?

Well, it may be. It is just these cases that just take a half hour that take weeks.

Mr. Denlinger: We will fool you this time.

The Court: Mr. Milburn, you will have to signal this time for a recess.

We will hear you gentlemen speaking for the union.

OPENING STATEMENT BY MR. KNEE FOR CERTAIN DEFENDANTS

Mr. Knee: May it please your Honor, my name is Robert C. Knee, one of counsel for the Defendant-unions and business representatives who are made parties to this action.

The petition filed in this case points to—as Mr. Denlinger has outlined in his opening statement—a violation of the Anti-trust Law in Ohio known as the Valentine Act. [fol. 25] The answer for and on behalf of the unions denies all and singular the allegations pertaining to that alleged violation and pleads other defenses specifically which I shall outline a bit later among which is the attack upon the jurisdiction of this Court.

I shall attempt chronologically to outline the situation. I shall try not, if your Honor please, to cover the ground which has heretofore been covered in Plaintiff's opening statement except as it would apply specifically to us in varied matters.

The Plaintiff in this case, may it please your Honor, is a member of the Defendant Local Union Number 24. The evidence will show that he has been a member of that union for quite some time. It is a general drivers local comprising individuals who drive trucks who join the union for the protection which the union is able to give them, and which we are required by law to give them once they become members, regarding their wages, hours, and working conditions by way of representation in negotiation of contracts, the inclusion of those conditions and wages in a contract once the negotiations have been completed and such other business as the handling of grievances and related matters as occur day to day in normal union operations.

In this matter we have what has been referred to as a Central States Area Over-the-Road Motor Freight Agreement. I choose to look upon this agreement, if your Honor please, as the transportation heart of America. This agree-[fol. 26] ment covers the busiest area and territory within the United States, twelve states as a matter of fact, in addition to that, Louisville, Kentucky.

Now, in the transportation industry generally we have operators who are called common carriers who operate under permits through the ICC, Interstate Commerce Commission, which operates interstate; or PUCO out of Columbus, Ohio, which operates by permits within the State of Ohio, intrastate.

Now, there are companies who own their own equipment and have that equipment driven. There are companies, and the same companies that I have mentioned who own their own equipment, also may lease equipment from other individuals.

The Plaintiff in this case is one of such individuals. His petition alleges that he owns more than one piece of equipment. He also alleges that he drives one of these pieces of equipment. We are, if it please your Honor, concerned

here with just that one piece of equipment, no other. I think counsel referred to that and we are not interested in what we call fleet owners or all of these trucks.

Now, there are many owner-operators in the State of Ohio. There are many owner-operators within the area of the Central States Agreement. By owner-operators, we mean an individual such as this individual who owns a truck and drives that truck. In the trade, to use Mr. Rabe's expression, we call them I.T.O., independent truck owners.

Now, it is the claim of the Defendants, unions, I mean, and I believe the evidence will show, that since the Plaintiff [fol. 27] in this case became and was and is a member of Local 24, he has under the law given over to that union the right to bargain for him as an individual for his wages, hours, and his working conditions.

And at this time may I say and make it exceedingly clear, that when we are talking about a man who owns his truck we have a divisible (sic) quotient. May it please your Honor, by that a collective bargaining agreement is pointed toward and operates in the field of wages, hours and working conditions. His truck is also a part of the divisible quotient, but not a part of him as far as a collective bargaining agreement is concerned. He may contract for that truck, lease that truck and make private arrangements.

This union, the evidence will show, has nothing to do with that truck, but I am going to qualify that a little bit later.

So, therefore, our contention is and the evidence will show that the Plaintiff, having given his right to the union to bargain for him, that it does not become necessary for him to become a signatory to this agreement; that it does not become necessary for him by signing it to ratify this agreement under the simple principles of law of agency.

Now, the evidence will show that the framework of negotiation are these in every area and state in the United States—

Withdraw that, please.

Every area and state within the Central States Area [fol. 28] under the jurisdiction of this agreement appoint committees from the local unions within the State. That within each state there is a conference of teamsters and over-the-road council which represents the state. That a

committee from these various and several states comprise the negotiating committee of the unions and at a central point sit down together with a like committee of all employers in the area and the result is that an area contract results.

And may I at this time point out to your Honor that area contracts between associations of employers and associations of unions is not an unusual thing. As a matter of fact, in this modern era of ours it is very usual.

So we claim on behalf of the Defendant-unions that the statement or the claim or the allegation that this Plaintiff did not sign this agreement is of no moment, either practically, economically, or legally. That when he becomes a member of a local union he gives over to that local union the right for them to do for and on behalf the same as the other three or four thousand members who are a part of the local union. That is the framework, that is the background against which we shall proceed.

Now, may it please this Honorable Court, the nub of the Plaintiff's case is the violation of the Valentine Act in Ohio. I want now to give our plain, clear context regarding that allegation and what we expect the evidence to show and what we expect the law to reveal on the merits.

We deny specifically that there is any violation directly [fol. 29] or indirectly of the Valentine Act of the State of Ohio or any other statute of similar nature. We contend and claim that Article 32 of the Over-the-Road Agreement in its various sections, which I shall not at the time read verbatim or even sereotum, (sic) but refer to them generally, do not fix control or have a tendency to fix and control prices nor do they in any manner create or tend to create a monopoly.

We further contend that the area agreement to which we have referred is an agreement for the promulgation and fixing, yes, of wages, hours, and working conditions of an individual.

Now, at this point it will be necessary for me to digress and remind the Court that there are two types of driver: one who drives company equipment; and one, such as the Plaintiff, who drives his own equipment, one piece, that is. So there is where the divisible quotient comes in. He

has a wage rate whether it be an hourly rate, whether it be a tonnage rate or percentage of the load, or whether it is mileage, but also has a lease rate or an amount for which he is paid for the use of the truck by the operator for whom he drives.

Now, here is the nub. Here is the nub, if your Honor please, and I want to make this just as clear as I possibly can. In the past it has been the experience of the local unions, and I say this in a kindly way, that by devious and various devices and schemes some operators have depreciated the wage rate of an individual who owns his own piece of equipment.

[fol. 30] I shall give your Honor a classic illustration, one which I was involved in in Akron many years ago. It is a simple illustration. Ten cents an hour has been negotiated by the unions for an owner-operator and member of the union for his wage, ten cents an hour increase that is given to him. Then ten cents per hour is taken off the truck and we find that he is left level. From that particular illustration which has occurred times without number in the State of Ohio, the schemes and devices become more subtle in their operation, more subtle. And so we have to negotiate the separation of checks, one for wage rate and one for truck. But as we always say, they shall never meet to take away a wage rate which has been honestly negotiated for the person himself.

Now then, there is, if your Honor please, rates cited in this Article 32, minimum truck rates. We believe, or we are sure the evidence will show, that these rates are put into this contract for one particular reason only and that reason is as follows, and our evidence will show this:

That they are the actuarially sound rates below which a man could not lease his truck for, unless in so leasing he would depreciate or lose money on his wage rate which we have set forth in the Central States Agreement.

We further feel and believe, and therefor aver, that the evidence will show that in all instances, practically all, if not all, that these various road runs within the area into and out of Ohio, that the amount of money received by the Plaintiff for his truck is over and above and beyond, with-
[fol. 31] out question, the actuarially minimum sound rates

there to protect the wage rates in the Central States Contract. In all instances, I repeat, it is above that. And, therefore, we categorically and specifically deny that the intent of this contract was to fix any price of equipment.

Now, may it please your Honor, we don't wish to belabor the Anti-trust Law further because this is simply an opening statement, not an argument.

Now, Plaintiff claims he represents a class of individuals. It is the contention of the Defendant-unions, your Honor,—and I address this to the lawyers present who might be interested—it is the contention of the Defendant-unions, and we plead this in our answer, that this is not a true class suit under any given set of legal circumstances. This Plaintiff, by no stretch of the imagination, can represent other I.T.O.'s in the State of Ohio. I should like to list a number of reasons why he can't do it.

First of all, there are many rates in the State of Ohio concerning leases, many types of leases. My understanding of the law is there must be a oneness or sameness or we can't represent a class.

Second, he asks for damages. It is an axiomatic factor or axiomatic in law that there must be a oneness and sameness in law of all types, kinds, and particulars. We have no such situation here. We would be in this court if we examined each lease in the State of Ohio for six months, not six weeks, because they are all different with the exception of the wage rate for him as a driver. That is the only fixing in this case.

[fol. 32] For another reason this Plaintiff cannot say to your Honor, either theoretically or practically that because he doesn't like the arrangements other I.T.O.'s don't like them because that isn't the fact. I dare say that there are hundreds of men that drive one piece of equipment that are happy and satisfied with the arrangements under which they are now operating.

So, may it please this Honorable Court, in every true sense of the word we cannot conceive that he can as a representative of a class, say that a decision through his allegations and statements can operate like a blanket of rain across the State of Ohio and people in like circum-

stances, because we do not have like circumstances as far as leases are concerned.

Now, Plaintiff claims that this Court, of course, has jurisdiction or naturally this case would not be filed here.

May it please your Honor, one of our important legal advancements which we will make to your Honor at the proper time is that this Court under the laws of the United States does not have exclusive jurisdiction to decide the issues. It is our contention that that no longer is an open question. We are prepared to submit and we have prepared, if your Honor please, a memorandum which we shall hand to the Court along with our motion to dismiss this case in which our authorities and reasoning and arguments are contained.

We wish now to say to this Honorable Court that the Defendant-unions in this case are extremely and singularly [fol. 33] serious regarding this jurisdiction claim. May I say at this time that perhaps jurisdiction in the field of labor relations, may it please your Honor—and I say this for counsel's benefit, Mr. Denlinger—is perhaps one of the most misunderstood. Counsel has said to your Honor that if they thought that this Court did not have jurisdiction why did the Defendants not remove this cause to the Federal Court. And if your Honor please, I say in all kindly fashion there never was a legal issue more fundamentally settled and more elementary than that. I want to tell your Honor why we didn't do it. We can't do it.

If we would remove this case to the District Court the Court would maybe accept it and dismiss it. There are at least twenty-five cases across the country on that point. Under the Amazon Cotton Mills case which is a very famous case in this field, and this admits no argument, there is only one body that can bring an injunction if there is a labor dispute and that is the National Labor Relations Board. That is fundamental. And may I point out to your Honor that is exactly what counsel in Cleveland, Ohio, in representing the Amalgamated and now famous Richmond case, definitely found out by the decision of the United States Supreme Court. He went the wrong route and after they found out you couldn't do it they came back and stopped making a federal case. They filed a simple motion to dis-

miss and the Judge of Common Pleas Court sustained the motion in fifteen minutes.

May it please this Honorable Court, Plaintiff as a member of Local Union Number 24 has given over to that union [fol. 34] the right to bargain for him. They had a right to sign the Central States Agreement. Plaintiff in this case does not have a representative capacity to sue.

And finally, this Court does not have jurisdiction, as I have outlined, and we most sincerely suspect and believe that our evidence will show and varify (sic) the statements that I have made here. Thank you.

The Court: We will recess briefly.

Recess

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Are there any other attorneys who desire to offer opening statements?

This is the way I think I should handle this matter. Of course, I have no impressions at all as to whether or not there is any merit on the jurisdictional point. It is purely a question of law and I don't desire to take time out to determine it. Those of you who are interested in asserting that can assert it throughout. I can expect to overrule you on it. Your rights can be preserved.

I would like to move along just as expeditiously as we can and get all the evidence in. Then I will try to determine the questions involved and, of course, if all the evidence is in, we should be able to get a final decision from the higher courts. That is the way I would like to try it. Don't you think that is a good, proper way to do? I don't want to take time out.

[fol. 35] Mr. Knee: Your Honor, could I please make a statement. We expect to make a motion. It is part of our defense to ask your Honor to dismiss it on the basis of jurisdiction. We have prepared a memorandum on this question that I can hand to the Court now, and I would ask the Court to consider it seriously, and we will make the motion along with it at the proper time.

The Court: All right. I will look into this if I can find some time.

Are there any counter authorities to this?

Mr. Iden: As to your desire to consider it now, I would like to reply to their brief. But as your Honor had indicated you intended to take the evidence in the case and consider the jurisdictional questions later. At that time I will then brief the questions that I feel are in this case and under consideration.

The Court: I am speaking in terms of probabilities. If the question becomes very clear to me, if it becomes certain that I have no jurisdiction, in that situation I might, probably would just dismiss the case.

Mr. Iden: I have no up-to-date memorandum with me. I have one from the other case I would like to file.

The Court: Mr. Denlinger, are you ready to go forward?

Mr. Denlinger: Yes.

The Court: All right. Let's proceed with our evidence.

Mr. Denlinger: I would like to call Mr. Burke.

[fol. 36] The Court: Anyone desire an order of exclusion?

Mr. Denlinger: Plaintiff does not, your Honor.

The Court: All right. Very well.

Those of you who testify and everyone who has anything to say I want you to say it at all times in a tone of voice high enough so we can hear you without any trouble.

First witness.

Mr. Denlinger: May I call Mr. Burke, please.

KENNETH A. BURKE, who, being first duly sworn, testified as follows:

Cross examination.

By Mr. Denlinger:

Q. Will you state your full name and address to his Honor, Kenny.

A. Kenneth A. Burke, 1835 Jefferson Avenue, Cuyahoga Falls, Ohio.

Q. What is your occupation or business?

A. I am President and Business Agent of Teamsters Local Union Number 24.

Q. And that office and your place of business is in Akron, Ohio?

A. Yes, sir.

Q. Now, would you briefly tell the Court what are your duties in those positions which you hold.

A. Enforcement of the working agreements.

Q. When you say the working agreements, do you have reference to what we have been talking about this morning as the Central States Area Over-the-Road Motor Freight Agreement?

A. Yes, sir.

Q. That is one of them and then you have local agree-[fol. 37] ments regarding local cartage and subjects of that matter over which you have jurisdiction for enforcement?

A. Yes, sir.

Q. Did you bring along with you the Central States Contract this morning?

A. Yes, sir.

Q. Will you produce it, please?

(Exhibit 1, being Central States Area Over-the-Road Motor Freight Agreement with Ohio Rider, was marked for identification.)

Q. Mr. Burke, I will hand you what has been marked for identification as Exhibit 1 and which is the book you handed me and ask you to state to the Court whether that is the agreement for over-the-road motor freight driving which governs in Ohio.

A. Yes, sir; that is.

Q. This contract also covers other states, but your jurisdiction and the jurisdiction of local unions in Ohio deals with carriers in Ohio and not out of the state, is that correct?

A. You will have to phrase that question again.

Q. What I am trying to find out, if you know, Mr. Burke, is that the business agents of the teamsters in the State of Ohio enforce the terms of this agreement, Exhibit 1 against carriers in Ohio?

A. Yes, sir.

Q. All right. Now will you tell the Court how uniform is the enforcement of this contract in the State of Ohio.

A. I can only speak for my local union.

Q. Your local union covers what counties?

A. Covers Summit, Portage, and Medina.

[fol. 38] Q. In Summit, Portage, and Medina Counties is this agreement known as Exhibit No. 1 enforced against all carriers?

A. To the best of my knowledge; yes, sir.

Q. Now, are you familiar—not familiar—withdraw that. Are you acquainted with business agents of other local unions in the State who have been made Defendants herein?

A. Yes, sir.

Q. Do you know what their duties are with reference to the enforcement of this contract in the counties in which they live?

A. I cannot answer that question, sir.

Q. You know who could answer that question?

A. The people who would be involved in the same position I am in.

Q. Do you get instructions from any particular counsel or board or other head as to the enforcement of this agreement?

A. No, sir. The agreement speaks for itself, sir.

Q. And you do not get any instructions except to enforce the terms of the agreement as written?

A. Yes, sir.

Q. Now, have you brought with you a copy of the present constitution of the teamsters which deals with the membership and other matters regarding those people who join the Teamsters Union?

A. I do have, sir.

Q. Will you produce that?

(Exhibit 2, being the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, was marked for identification.)

Q. I will hand you what has been marked for identification [fol. 39] as Exhibit 2, and ask you whether or not this

is the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America that was in effect in 1954, '55, and presently.

A. Yes, sir; it is.

OFFERS IN EVIDENCE

Mr. Denlinger: If your Honor please, we would like to offer in evidence Plaintiff's Exhibits 1 and 2.

The Court: Any objection?

Mr. Previant: Object to the materiality and relevancy of them.

The Court: Any other objection?

I will admit them.

I am anxious to have the record made up as full as we can so when the matter gets to the reviewing courts everything will be before them.

Anything further?

(Exhibits 1 and 2 received in evidence.)

Mr. Denlinger: That is all from this witness.

The Court: You are a party?

Mr. Knee: He is a party.

The Court: Step down.

(Witness excused.)

Mr. Denlinger: Now, at this time I would like to ask Mr. Knee and Mr. Previant if we might stipulate that Exhibit 1, being the agreement of the Central States Area Over-the-Road Agreement between the union, their various locals and the carriers of Ohio, has uniform application [fol. 40] throughout the State as it has within the three counties that representative Burke has testified. If we could agree to that I can shorten that subject without calling another witness.

Mr. Previant: We will stipulate that that is the uniform agreement which we seek to negotiate and get the signature to of every employer whose employees represent that type of operation in such uniform agreement.

Mr. Denlinger: I would be happy to accept that stipulation.

Mr. Rabe: Does that have the Ohio Rider?

Mr. Denlinger: Yes, it has everything. This is the agreement with the Ohio Rider.

If your Honor please, as I said I will be happy to accept that understanding between us and call the Plaintiff in the case at this time.

REVEL V. OLIVER who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Denlinger:

Q. Will you state loudly enough, Revel, for his Honor and the attorneys representing people here to get your answers.

A. Yes, sir.

Q. Am I speaking loudly enough for all of you gentlemen to hear me?

What is your full name?

A. Revel V. Oliver.

Q. Where do you live?

A. 210 Winchester Road, Akron, Ohio.

[fol. 41] Q. How long have you lived in Akron?

A. Approximately sixteen years.

Q. You married?

A. Yes, sir.

Q. Have a family?

A. Have one child.

Q. What is your business, Mr. Oliver?

A. Owner-operator of trucks.

Q. How many tractors and how many trailers do you have?

A. I have six tractors and four trailers.

Q. And for whom do you—withdraw that.

What is the nature of your business? What do you do with these tractors and trailers?

A. I haul freight for carriers that has certificates.

Q. And what carriers do you have any arrangements with?

A. A.C.E. Transportation of Akron, and Interstate Truck Service.

(Exhibit 3, being a Certificate of Title, was marked for identification.)

(Exhibit 4, being a Motor Freight Transportation Agreement, was marked for identification.)

Mr. Denlinger: Do you other gentlemen wish to see these exhibits? One is a Certificate of Title and the other is the proposed lease. Be glad to pass it to you.

Mr. Rabe: I don't care to.

Q. Mr. Oliver, I will hand you what has been marked for the purpose of identification as Exhibit 3 and I will ask you to look at it and tell his Honor what that document is.

A. That is a title to a 1951 International tractor in my name.

[fol. 42] Q. All right. Now I will hand you what has been marked for identification as Exhibit 4 and ask you to tell the Court what that is.

A. That is a lease between myself and A.C.E. Transportation for that same tractor.

Q. In other words, Exhibit 4 is your lease arrangement with A.C.E. for the tractor which title is represented by Exhibit 3, is that correct?

A. Yes, sir.

Q. All right. Are you presently operating that piece of equipment?

A. Yes, sir.

Q. Under that particular lease known as Exhibit 4 with the A.C.E. Transportation Company?

A. Yes, sir.

Q. What are you doing with the other five tractors and trailers? Do you have leases covering them also?

A. Yes, sir.

Q. Have you purchased any equipment since January 1955?

A. Yes, sir.

Q. Which are under lease to A.C.E.?

A. Yes, sir.

(Exhibit 5, being a Memorandum Certificate of Title, was marked for identification.)

(Exhibit 6, being a Motor Freight Transportation Agreement, was marked for identification.)

(Exhibit 7, being a Memorandum Certificate of Title, was marked for identification.)

(Exhibit 8, being a Motor Freight Transportation Agreement, was marked for identification.)

Q. I will hand you what has been marked for identification as Exhibit 5 and together with it Exhibit 6 and in the [fol. 43] interest of saving time, tell the Court what those exhibits represent insofar as your operation is concerned.

A. This Exhibit 5 is a Certificate of Title for a '55 International tractor, and Exhibit 6 is a lease for the same tractor at A.C.E. Transportation.

Q. The title and lease is with you?

A. Yes, sir.

(Exhibit 9, being a Certificate of Title, was marked for identification.)

(Exhibit 10, being a Truck Lease, was marked for identification.)

(Exhibit 11, being a Memorandum Certificate of Title, was marked for identification.)

Q. Mr. Oliver, I will hand you what have been marked for identification as Exhibits 7 and 8 and I will ask you if those documents represent your title for the equipment mentioned in the Certificate and if Exhibit 8 is the lease for that equipment that you have with the A.C.E. Transportation Company.

A. That's right.

Q. All right. Now I will hand you what have been marked Exhibits 9, 10, and 11, and ask you to state whether or not those documents represent the title of a tractor and trailer leased to the Interstate Truck Service, Inc., of Martins Ferry, Ohio; Exhibit 10 is the lease between you and that company for the equipment represented by Exhibits 9 and 11.

A. That is right.

Q. Now, I notice that Exhibits 9, 10, and 11 are referring to the 15th of November 1955, with the Interstate [fol. 44] Truck Service, Inc. I would like to ask you whether or not prior to that time you were under lease of equipment with that company.

A. Yes, sir.

Q. And where is the lease or what is the date or the time you were leasing to Interstate prior to this lease which is identified here, what year?

A. 1952.

Q. 1952. What has happened with reference—

The Court: I hate to say anything at all because we have been getting along in an exemplary fashion and I am sincere in saying that, but I would appreciate it if you lawyers would not—and I think this is the time to say it—repeat the answers. It interferes with the reporter a little bit.

Mr. Denlinger: Yes, your Honor, I will correct myself.
The Court: Just refrain from that, it will be fine.

Q. Will you tell the Court whether or not you had leases with Interstate prior to November 1955.

A. I did.

Q. And where are those leases now?

A. Well, you have one over there that is prior to that, and the other was on an older piece of equipment and when I sold it and got a new one I replaced the lease with a new one.

Q. I was looking for a prior one.

A. That was in June, wasn't it?

Q. Yes.

A. That is a new tractor.

Q. You do have a lease with Interstate Truck Service dated June 20, 1955, for a tractor and trailer in the same form as this previous one we have discussed?

A. Right.

Q. What I am interested in is for you to state to the [fol. 45] Court going back before 1955, do you have any leases for '54, '53?

A. I did have one in '52, but when I sold the truck and bought this new one I made the new lease.

Q. Are you talking about the lease of June '55, replacing the '52 lease?

A. Yes, sir.

(Exhibit 12, being a Memorandum Certificate of Title, was marked for identification.)

(Exhibit 13, being a Truck Lease, was marked for identification.)

Q. Now, I will hand you what has been marked for identification as Exhibits 12 and 13 and ask you to state to the Court what those exhibits represent with reference to your operation.

A. Exhibit 12 is a Certificate of Title for a '55 Mack tractor, and Exhibit 13 is a lease between me and Interstate Truck Service for that same tractor.

Q. Now, is that the tractor that was purchased in June of 1955 and replaced equipment and a lease of 1952?

A. That's right.

Q. Were you the owner of the equipment in 1952 evidenced by Certificate the same as this one?

A. Yes.

Q. Will you tell the Court whether or not the agreement between you and Interstate in '52 was the same as shown here on Exhibit 13.

A. It was.

Q. Now, I would like for you to very briefly indicate to the Court what is the operation of the equipment under these leases that have been identified here, first with the A.C.E. Transportation Company.

A. My leases with A.C.E. Transportation, we pick up [fol. 46] and deliver freight and haul from Akron and points with tractors and trailers and some tractors to designated places and points in the New England territory for a tonnage rate for the tractor and trailer with driver.

Q. In other words, your financial remuneration from A.C.E. is on the basis of the tonnage that you haul?

A. Yes, sir.

Q. For both the equipment and driver on the equipment, is that correct?

A. Yes, sir.

Q. Who pays the driver?

A. I do.

Q. Who pays the social security on the driver?

A. I do.

Mr. Previant: If the Court please, I believe we are getting into an area here that is not covered by the pleadings or by the contract for the contract clause which is charged as a violation. I call the Court's attention to the fact that the clause or article which is challenged here is where the owner of a vehicle is the driver. The line of questioning now is directed to a relationship which is entirely to that type of relationship that is a relationship between some other person who drives the tractor which is owned by the Plaintiff here. We believe that is entirely foreign to the issues in this case.

Mr. Denlinger: I will get back to Mr. Oliver as driver, your Honor, instead of his drivers.

The Court: I take it you feel that point is well taken. [fol. 47] Mr. Denlinger: I think your Honor, that Article 32, Section 10 might bear that interpretation. It says the employer or certified or permitted carrier shall do certain things that I was getting into with reference to his drivers that he hires for the additional equipment.

The Court: All right.

Mr. Denlinger: So we will go back to him. I want to narrow these issues as much as I can to meet the objections of any counsel involved.

Q. With reference to your own wages, Mr. Oliver, who pays them?

A. They come out of the gross earnings of the tonnage rate.

Q. Out of the use of the equipment. You make no separate check for you and the equipment?

A. No, sir.

Q. Who pays social security on you as driving?

A. I pay that at the end of the year.

Q. You pay that. Who pays the compensation?

A. If I have any I pay it. I don't remember that.

Q. Who pays the Ohio Driver's Insurance?

A. I do.

Q. That is both companies here for whom you work?

A. Yes, sir.

Q. And lease equipment. You are a member of the union?

A. Yes, sir.

Q. Who pays your union dues?

A. I do.

Q. Who pays the bridge tolls in your operation of your equipment for both of these companies?

A. I do.

Q. Who pays the certificates with reference to the per-
[fol. 48] mits and the travel certificates?

A. The company pays that one in Massachusetts, and at A.C.E. we pay for Massachusetts fuel permit.

Q. Now, who pays for the tires and the oil and the gas and the repairs of the equipment?

A. I do.

Q. Would you tell the Court what the carriers in each of these instances furnish toward the transaction. What do they do?

A. They furnish the permits and the dispatchers or solicitors anyway you could get the freight. At A.C.E. they pay the New York ton mile tax and Ohio ton mile tax. At Interstate Truck Service I pay New York tax and Ohio axle mile tax. Both carriers furnish public liability, property damage insurance. Both carriers furnish cargo insurance. I pay collision, fire, theft on my equipment.

Q. You buy the equipment and invest your money in it, is that correct?

A. Yes, sir.

Q. Do any of these carriers have any investment of any kind in the equipment that is used in this operation?

A. Not in mine; no, sir.

Q. You finance this equipment on your own with finance institutions of this town, do you?

A. Yes, sir.

Q. And then after the purchase is made, in the upkeep and the operation, do you furnish all of the finances that are required for it?

A. Yes, sir.

Q. You are not permitted to use this particular equipment for any other carrier except those covered by your lease, is that right?

A. That's right.

[fol. 49] Q. Now, do you have a different way of finance remuneration at the A.C.E. and at the Interstate? What is your basis of payment at A.C.E.? I will put it that way and withdraw the other question.

A. I get paid a tonnage rate at A.C.E. At Interstate Truck Service I get a percentage of the revenue. It is two different percentages depending on the commodity I haul.

Q. You know what the contract here provides as to the method of payment?

A. Yes, sir.

Q. What is that rate?

Mr. Previant: Object to that. The contract speaks for itself.

Mr. Denlinger: I will withdraw that, your Honor.

Q. Mr. Oliver, I will ask you whether or not prior to this contract known as Exhibit 1, being printed and distributed among the carriers, did you ever see the terms of that agreement?

A. No, sir.

Q. Were the terms of that agreement relative to owner-operators at any time discussed with you?

A. No, sir.

Q. At any union meeting or any other kind of a meeting with reference to the union?

A. No.

Q. Did you ever—were you ever notified to appear at any meeting of the union to consider the terms relative to your equipment?

A. No, sir.

Q. Directing your attention to that portion of the agreement regarding pick-up and delivery on Page 41 of the agreement, will you refer to it? On Page 41 of the agreement [fol. 50] ment, the minimum rate for leased equipment

owned and driven by the owner-driver shall be per mile, is that correct?

A. Yes, sir.

Q. Do you have any arrangement under your lease for per mileage compensation?

A. No, sir.

Q. Or for seventy-five percent of the rate for dead-heading?

A. No, sir.

Q. Do you get any remuneration for dead-heading under either of your leases with A.C.E. or Interstate?

A. No, sir.

Q. Directing your attention to Page 49, with reference to the health and welfare benefits, do you pay for health and welfare under the terms of your leases?

A. No, sir.

Q. How much health and welfare are you now paying both for your drivers and for yourself?

Mr. Previant: If the Court please, we have the same objection. The testimony again is getting beyond the field of this man's relationship as a driver and owner of his own piece of equipment to the company. I don't believe it is at all pertinent.

Mr. Denlinger: I am sorry. I will get back to him alone.

Q. Do you pay for that insurance?

A. Yes.

Q. The employer does not pay for it?

A. No, sir.

Q. And he is not required to pay it under the terms of your lease, is he?

A. No, sir.

Q. Now, referring to Page 51 and the pension plan, are you paying into the pension fund or plan of the union?

A. No, sir.

[fol. 51] Q. Is the employer deducting it out of your pay?

A. No, sir.

Q. Has either one of these companies, A.C.E. or Interstate advised you what had been done by the union representative with reference to that pension plan as it applies to you?

Mr. Knee: Object to that, what the union representative advised him, as being hearsay.

The Court: Sustained.

Q. Has the company discussed with you about paying into the pension plan?

A. Yes, sir.

Q. Who discussed it with you?

A. Operating manager at A.C.E. and Interstate Truck Service it was their agent.

Q. Up to this time, this \$2 per week has not been contributed?

A. No, sir.

Q. And the pension plan is not in the provisions of your lease?

A. No, sir.

Q. Is that right?

A. No, sir; right.

Q. Now calling your attention to your lease, is it a fact that you contract to haul, to pick up, haul and deliver from what points?

A. From points in the locality of Ohio that they serve and designated points in eastern territory.

Q. By that do you mean from shipper to consignee?

A. Yes, sir.

Q. You do not mean from terminal to terminal or dock to dock?

A. No, sir.

Q. By virtue of your contract of lease you are obligated [fol. 52] to haul for both these Defendants from the point of pick up including pick up to the point of delivery including delivery, is that right?

A. Yes, sir.

The Court: I suppose I will have to regard what the contract says on that.

Mr. Denlinger: Yes, you will, your Honor. I am doing it preliminary to what happens.

Q. I want you to tell the Court what happens by way of the enforcement of the Central States Contract to you when you make efforts to deliver at the consignees point of de-

livery, what happens with reference to the delivery of your load.

Mr. Previant: Object to that question. Wholly immaterial, irrelevant.

The Court: Well, I shall allow it. I am going to make many rulings I suspect with misgivings, but I am going to permit it in. And these are matters that can be discussed in your briefs and I hope I will come to comprehend it more fully after I have seen your briefs than I do now. You may answer.

A. Well up in New York State, Interstate where we haul on percentage if I attempt to make a delivery and get it delivered okay that is on straight load. If I am stopped by a fellow who claims he is a member of the union, he goes down and tells the carrier and they pay him a day's wages and charge it back to me even though I delivered the load. (sic)

Mr. Knee: There wasn't an exception to that. I want to note an exception.

The Court: You don't have to.

[fol. 53] Mr. Knee: Not in this court?

The Court: No.

Mr. Knee: All right.

Mr. Denlinger: Mark that the next number.

(Exhibits 14 and 15, being Script Sheets, were marked for identification.)

Q. I will hand you what has been marked for identification as Exhibit 14 and ask you to state to the Court what that document is.

A. That is a straight load of freight that has been picked up and delivered direct.

Q. With what company?

A. Interstate Truck Service.

Q. Interstate Truck Service, on what date?

A. 8-2-55.

Q. And is that a part of the records of your business?

A. That's right; that is my copy of the load I haul.

Q. That is the copy of the load that you hauled on that date with the amount of money you were paid?

A. Yes, sir.

Q. And there was no one who assisted in the delivery of that load? There were no charges for delivery, in other words?

A. No, sir.

(Exhibit 16, being a Script Sheet, was marked for identification.)

Q. Now, a moment ago you advised the Court that Exhibit 14 represented a straight load. Explain that to his Honor, what a straight load meant.

A. That is just one bill on it which is a straight pick-up and straight delivery going from one shipper to one consignee.

[fol. 54] Q. Now, I will hand you what has been marked for identification as Exhibit 16 and ask you to state to the Court what that sheet represents.

A. That is a straight load from one shipper to one consignee.

Q. And what date?

A. September 10, 1955.

Q. And can you give us the amount that was computed as due you for hauling that shipment?

A. \$219.28 was due me.

Q. Now, what was the total amount of it or what were the charges against that? Identify for the Court the initials and figures.

A. These initials "CMPU" is city man pick-up, and they have miscellaneous pick-up, city man pick-up and city man delivery on it.

Q. What is the city man delivery, what does that mean?

A. That is where I paid the city man either when I was delivering it or picking it up.

Q. Who is the city man? Tell the court that.

A. Well, some places they have city men to pick up and deliver.

Q. Who has them?

A. Interstate Truck Service, and if we go to their docks with any miscellaneous, they compel us to take a city man out with us, but if we have a straight load and can go direct, if somebody doesn't stop us and say he is a union

man and go over to the company and demand the money, we can deliver it direct.

Q. In this case here on Exhibit 16 the city man didn't let you deliver, did he?

A. Evidently didn't, they got a \$35.91 charge on it.

Q. How much is that \$35.91, for how much time or work? [fol. 55] A. Sometimes it might mean a half day or full day. If we get stopped if we have even got the load practically unloaded we have got to pay the man a day's wages.

Q. Who hires those men, the carriers or the unions?

A. I couldn't say. I don't know that.

Q. The fact of the matter is the city delivery men, you as the owner-operator pay for his time?

A. That's right.

Q. Does your lease provide for that type of deduction?

A. No, sir.

Q. Now, I will hand you what has been marked for identification as Plaintiff's Exhibit 15 and ask you to tell the Court what that document is.

A. That is another script sheet of a miscellaneous load.

Q. By miscellaneous you mean many or several shippers and consignees?

A. That's right.

Q. Now, on those do you have pick-up and city delivery charges?

A. Yes, sir.

Q. On that particular one how much were the delivery charges?

A. Well, city man delivery was \$26.52, and miscellaneous delivery of \$79.32 which they are all explained in the initials down there.

Q. That all came out of the use of your equipment, the price that was being paid for that?

A. Right.

Mr. Denlinger: Your Honor, you want to go beyond twelve o'clock?

The Court: We haven't reached that yet.

If you would like to stop now, all right. I have got [fol. 56] to stop a little early today. You want to recess now?

Mr. Denlinger: If you don't object.

The Court: One-fifteen.

Recess

REQUEST TO WITHDRAW SECOND CAUSE OF ACTION AND RULING ~~BY THE COURT~~ *Granting* SAME

Mr. Denlinger: At this time, if your Honor please, I would like to interrupt the further examination of this witness which I would like to conclude at the end, while I wish to ask the Court and counsel in this case: We have pleaded a second cause of action which deals with that portion of monopoly laws of Ohio regarding damages, and for two reasons we would like to ask your Honor's permission to either withdraw that second cause of action or dismiss it.

The Court: Well, that is your prerogative. If you want to withdraw that is entirely up to you.

Mr. Denlinger: All right. We feel, if your Honor please, that the question which is of very great importance to all parties here is not enhanced by the introduction of either evidence or this question into the problem and I would ask your Honor for permission to withdraw it at this time.

The Court: Very well.

Mr. Denlinger: Now, one other thing, your Honor. This morning in questioning this witness regarding drivers of his equipment other than himself being a driver we accepted the objection made by Mr. Previant with reference to its relevancy and since that time I have examined [fol. 57] the Article 32 which I think gives us the right to go into that question, and without asking the questions and then passing upon it I would like to give your Honor the reasons we think we should be permitted, and I draw counsel's attention to Page 45 and paragraph—

The Court: If it is a matter of relevancy, in the sake of saving time, I would rather permit you to go into it.

Mr. Denlinger: All right.

The Court: This case is being tried to the Court. I would like for you to have in the record anything you think

is pertinent. If I were more familiar with this case I might adopt a different attitude.

Mr. Denlinger: Well, with them taking their exceptions we will be protected and I think our questions will not be of any particular harm. But I would like to pursue that with reference to drivers that operate this equipment under the leases that we are going to present to your Honor as a part of our case.

Direct examination (continued).

By Mr. Denlinger:

Q. Mr. Oliver, I would like for you to give to the Court your understanding or definitions of the terms we have used with reference to rates as to per mile, tonnage, percentage, those three items. Will you explain to the Court what in this trade they mean.

A. Well, at A.C.E. we have an agreement with the company of the rate of what it would be so much a ton to different points.

Q. In other words, you agree, the carrier and the owner- [fol. 58] operator agrees how much a certain shipment per ton will pay between certain points?

A. That is right.

Q. Now, go on with the other two.

A. Interstate Truck Service, I work on seventy and seventy-five percent of the revenue that we haul.

Q. Explain that a little more in detail.

A. The revenue is the rate which they charge for hauling freight which is the rate set down by the Interstate Commerce on different commodities.

Q. Between certain points?

A. Certain points and places. And if I haul from these points and places, whatever that revenue is I get seventy and seventy-five percent.

Q. Depending on the commodity?

A. On the commodity rate which is a cheaper rate. We get seventy-five percent on the commodity rate. On the general rate we get seventy.

Q. Now, will you explain what dead-heading means.

A. Well, dead-heading is running empty from one place to the other. Supposing they send me from Akron to Canton to pick up a load for New York City; between here and Canton would be dead-heading, and if I get to New York and they send me to Philadelphia that is dead-heading mileage.

Q. Under the union contract the carrier would be required to pay you for dead-heading?

A. That is right.

Q. Under your lease requirement there is no such requirement?

A. That's right.

Q. Now you have drivers for the equipment which you don't drive?

A. Right.

[fol. 59] Q. And how many drivers do you have?

A. At the present time I have four.

Q. And who hires those drivers?

A. I do.

Q. And what rate of pay do you pay the drivers of your equipment?

Mr. Previat: If the Court please, we have the same objection to any inquiry and anything except the relationship of this man as a driver and owner.

The Court: Very well. Objection overruled. You may answer.

A. I pay them the regular scale the union calls for. I feel—

Q. No, no, you just answer the question. You don't volunteer.

Did I ask you who hires these men?

A. Yes, sir.

Q. You hire them?

A. Yes, sir.

Q. You pay them according to what? What rate do you pay the drivers that you have on your equipment?

A. I pay the union scale.

Q. Prescribed in the contract?

A. Yes, sir.

Q. Now, who pays their social security?

A. I do.

Q. Who pays the compensation insurance?

A. I do.

Q. Who pays for the bridge tolls that the drivers cross or use in the runs that the drivers of your equipment make?

A. I do.

Q. Now, according to your lease, what do you furnish the carrier?

[fol. 60] Mr. Previant: If the Court please, we submit the lease speaks for itself.

Mr. Denlinger: All right, it does.

Q. Under the contract this contract seeks to make the drivers of your equipment as employees of the carrier?

Mr. Previant: Same objection. Contract speaks for itself.

The Court: That is true. Of course, what that is I will have to look entirely to the contract and I will have to interpret what it says myself and give an opinion.

Mr. Denlinger: I will not continue that, your Honor.

I think you may cross examine.

Cross examination.

By Mr. Previant:

Q. Mr. Oliver, how long have you been a truck driver?

A. Twenty-two years.

Q. And did you always own your own piece of equipment as a driver?

A. For twenty years.

Q. I assume that then was prior to the time that you did any driving for A.C.E. or Interstate, is that right?

A. That's right.

Q. When was the last time you drove truck?

A. Last Saturday.

Q. And in whose service did you drive that truck?

A. A.C.E. Transportation.

Q. Where did you take that truck?

A. I took it from their terminal over to my station and [fol. 61] got a trailer and took it back for them to load.

Q. You mean you merely did an intrastate trip for the purpose of getting it ready for an interstate trip, is that right?

A. That's right.

Q. When is the last time you made an interstate haul for A.C.E. or Interstate Truck Service?

A. When is the last time I went out of the state?

Q. Yes.

A. About a month ago.

Q. And on what occasion was that, was it a regular trip you generally take?

A. Yes.

Q. How often do you take trips of that nature?

A. Go out of the state?

Q. Well, any haul other than a haul between your station and the terminal.

A. Oh, I do that regularly every week.

Q. How long have you been doing that regularly?

A. Off and on ever since I been working for A.C.E. and Interstate.

Q. What do you mean by regularly, Mr. Oliver?

A. Well, I haul trailers at Interstate. If I have a load to pick up at Wooster, Ohio, I go down there and take one trailer and bring another one back.

Q. How far is that?

A. Approximately forty miles.

Q. What other kind of trips do you take?

A. I will go up East and back for them.

Q. When is the last time you went up East?

A. A.C.E. or Interstate?

[fol. 62] Q. Either one?

A. A.C.E., about a month ago.

Q. When is the last time you took a trip east for Interstate?

A. Last summer.

Q. When was the time before last month that you took a trip up East for A.C.E.?

A. I would have to check for sure, I don't know.

Q. Well, is it a fact, Mr. Oliver, that your regular line drives for either Interstate or A.C.E. terminated some time ago and you no longer make regular trips for them?

A. Not regularly; no, sir.

Q. As a matter of fact, the only time you make trips is when one of your regular employees cannot make a trip?

A. That's right. I have one truck with no employee.

Q. So it has not been a common experience for you to drive for A.C.E. or Interstate on a long trip east?

A. Not in the last month, no.

Q. In other words, you wouldn't call yourself a regular driving owner?

A. Yes, sir.

Q. I am talking about the line hauls, the hauls up to the New England area and back. You haven't done one for Interstate since last summer?

A. A.C.E.

Q. I understand you did one for A.C.E. a month ago.

A. That's right.

Q. A month ago you made one trip for A.C.E.?

A. Yes.

Q. And before that it was a month or so?

A. That's right.

Q. So regularity would be every month or so for A.C.E. [fol. 63] and every eight months or so for Interstate?

A. That's right.

Q. You yourself do not have a certificate that enables you to haul freight either intrastate or interstate on your own account?

A. No, sir.

Q. You yourself cannot operate a business for the hauling of freight on your own account?

A. No, sir.

Q. Whatever freight you haul has to be hauled under someone who has a certificate with the Interstate Commerce Commission or Public Utilities Commission of Ohio?

A. That's right.

Q. Did you say that you had a service station?

A. No, sir.

Q. You said that you had taken a trailer from the A.C.E.?

A. Where I have the trailer serviced at a station.

Q. It wasn't your station?

A. No.

Q. You had taken it to have it serviced?

A. That's right.

Q. Your equipment is usually kept where?

A. At the terminals.

Q. That is generally a requirement of those companies, is it not?

A. Yes, sir.

Mr. Previant: You haven't offered any of those exhibits?

Mr. Denlinger: I will now.

Mr. Previant: You needn't do so on my account.

OFFERS IN EVIDENCE

Mr. Denlinger: May I interrupt Mr. Previant to offer in evidence Exhibits 3 to 16 inclusive which are the leases, [fol. 64] the certificates of title and the script sheets that were questioned about this morning.

The Court: Any objection?

Mr. Previant: Yes, we have an objection. I would like to divide the objection to Plaintiff's proposed Exhibits 3 through 13 inclusive which consists of titles of the various pieces of equipment and leases. Our objections are to the fact, number one, that all of the titles and leases are dated in 1955, subsequent to the time that a temporary restraining order was issued in this cause, and, therefore, have no relevancy or pertinency to any of the matters involved in this case, particularly since a restraining order would have permitted anyone from challenging such leases. And secondly, the leases are not complete and refer to an attached schedule which is not attached.

The Court: Overruled. They may be admitted.

(Exhibits 3 through 16 received in evidence.)

Mr. Previant: With respect to—we have a single objection. Those were trips that were made subsequent to the restraining order.

The Court: I don't think it will prejudice you at all.

Mr. Previant: We have a further objection. They refer to trips made by other drivers and charges made with respect to other drivers than Mr. Oliver.

The Court: I shall admit them.

Mr. Previant: With respect to that last objection, I would like to clarify—

[fol. 65] The Court: It isn't necessary. You have got your objection in.

Q. Mr. Oliver, with respect to Exhibits 14, 15, and 16, under your name that appears in the upper left hand corner the name of some other person appears.

A. Yes.

Q. On Exhibit 14 it is Mr. Volz?

A. Right.

Q. Exhibits 15 and 16 it is Mr. Turner?

A. Right.

Q. Those names are employees that made the trips?

A. That's right.

Q. You yourself did not make these trips, did you?

A. No, sir.

Mr. Previant: Did you understand that my objection included that?

The Court: Yes, I did.

Q. Mr. Oliver, I notice in one of the instances the lease seems to antedate the title by two years. I wonder if you can explain that. I call your attention to Exhibit 3 which is a certificate of title dated April 9, 1955, and the lease which purportedly refers to the same piece of equipment is dated December 28, 1953. I wonder if you can explain the reason for those two dates.

A. I don't know unless it would be a lost title because this is a duplicate title.

Q. You think you may have had title to that equipment prior to April 1955?

A. I think so. That is probably what that is because that is a duplicate title.

Q. It says on this title that the previous owner was A.C.E. Transportation Company, Inc. Do you see that entry?

[fol. 66] A. Yes, sir.

Q. Does that mean you purchased that piece of equipment from A.C.E.?

A. No. I had that when it was in A.C.E.'s name, and I got it changed over to me.

Q. Is it conceivable that while you had the lease in '53 the title was in A.C.E.'s name and the transfer was made only in April 1955?

A. I don't know for sure. I could check.

Q. Did you have all of these titles transferred after, you say, sometime in 1953?

A. No, sir.

Q. All of those titles are dated 1955?

A. No.

Q. All of the titles that have been offered here in evidence bear a 1955 date?

A. There is one that— Let me see now. No, I have one but the title is down at the bank.

Q. I have shown or I do show you now Exhibit 6, 8, 10, and 4, and call your attention to the fact that on the face of them appears the date 1955.

A. These are new tractors, right.

Q. All of these are '55?

A. This one and there is one more.

Q. Is there a vast depreciation in that type of tractor?

A. Yes, about four years.

Q. Is that about the only useful life it has?

A. Four years; yes, sir.

Q. Do you have with you the tonnage rates which are referred to in these leases?

A. No, sir.

Q. Can you produce those?

A. Yes, sir.

Q. Are they the same in each lease?

A. Yes, sir.

Q. You have a tonnage rate that applies to all equipment [fol. 67] in the service of A.C.E.?

A. Yes, sir; if we furnish our trailers to Connecticut points and Springfield, Massachusetts, it is eleven forty-five, I believe now.

Q. You say eleven forty-five. You mean \$11.45 a ton?

A. I believe. And to Boston, Providence, New Bedford is eleven ninety-five, that is we furnish our trailers.

Q. Without trailer?

A. It is two and a half a ton less.

Q. Two and a half a ton less?

A. Yes.

Q. Could you give us the mileage upon which these rates are based to the various points mentioned? I assume there is a set mileage?

A. Boston is about 695. Connecticut points is about 600.

Q. When you say Boston—

A. Boston and Providence is practically the same thing. New Bedford is a little farther, it is about 700.

Q. Springfield, Massachusetts?

A. Springfield, Massachusetts is around six.

Q. Were there any changes in these rates in the last several years?

A. Yes.

Q. When was the last change?

A. I don't know exactly, but we got fifty cents a ton raise approximately two years ago, two and a half or something like that.

Q. That was because of the increased cost of operation of the equipment, I presume?

A. I don't know.

Q. It was just given to you, you never asked for it?

A. No, sir.

[fol. 68] Q. Hasn't any one— Have you on your own behalf ever negotiated these rates with these carriers or any other carriers?

A. No, sir.

Q. The carrier tells you that it is willing to pay so much and you have your privilege of accepting or rejecting, is that right?

A. That's right at A.C.E. At Interstate we have a different set-up.

Q. Has that percentage payment been changed at Interstate in the past several years?

A. No, sir; not since I been there.

Q. How long have you had your equipment there?

A. Since 1952.

Q. Did you say you pay social security on yourself?

A. Yes, sir.

Q. At the end of the year?

A. Yes, sir.

Q. How do you calculate that?

A. I just pay on \$3,000.

Q. You mean you merely establish for yourself a flat amount of money for yourself as earnings?

A. Yes, sir.

Q. Employed by whom?

A. I don't know, I never put it on there. Self.

Q. Well, how long have you been paying social security tax?

A. About three years or four.

Q. About four years?

A. Something like that.

Q. You never put the name of an employer on there?

A. No, sir.

Q. Do you know when the privilege or the obligation of [fol. 69] paying a social security tax on self-employment became effective?

A. No, sir.

Q. Actually, when you paid on \$3,000, what you were trying to do was estimate your wages as a driver from either A.C.E. or Interstate when you yourself took the equipment out, isn't that right?

A. That's right; yes, sir.

Q. How long have you been a member of the union, Mr. Oliver?

A. Oh, this last time I been a member approximately three and a half years.

Mr. Denlinger: Will you speak up, Revel.

A. The last time I been a member about three and a half years.

Q. Do you pay your union dues directly or is that checked out of the money?

A. That is checked off at A.C.E.

Q. You have signed an authorization card to deduct that from whatever money is due you?

A. Yes, sir.

Q. When is the last time you attended a union meeting?

A. 1951.

Q. Well, back in 1951 did it have any relationship to the contract negotiations that were going on at that time?

A. I don't think so.

Q. You didn't attend any meeting since 1951?

A. No, sir.

Q. You attended no meeting which culminated in the 1955 contract?

A. No, sir.

Q. You have never been barred from attending any such meetings?

A. No, I have been told that I couldn't attend.

[fol. 70] Q. Who told you that?

A. Mr. Burke and Mr. Allhouse.

Q. When did they tell you that?

A. This meeting that I was at in 1951. It was a special meeting.

Q. You know what purpose it was called for?

A. Yes, sir.

Q. What was the purpose?

A. I was working at Roadway Express at that time and they put all company equipment on and we went up to see if we had any seniority as drivers.

Q. You were on (sic) owner-operator at that time?

A. Yes, sir.

Q. You went up there for that purpose?

A. Yes, sir.

Q. Who attended the meeting?

A. There was a whole bunch of owner-operators from Roadway.

Q. They all attended?

A. I wouldn't say all, but the majority of them.

Q. You attended, too?

A. Yes, sir.

Q. You haven't attended since?

A. No, sir.

Q. You know that the union holds meetings regularly?

A. I don't know.

Q. You are not aware of that at all?

A. No, sir.

Q. You never see any notices on company bulletin boards of union meetings?

A. No, sir.

Q. You mean you had never seen the contract prior to the time it was executed?

A. No, sir.

Q. Had you ever seen any Central States Over-the-Road Contract?

A. Yes.

[fol. 71] Q. You had seen the one that preceded this one?

A. Yes, sir.

Q. In fact, you were very much interested in the owner-operator provisions of the preceding contract?

A. Yes, sir.

Q. By preceding contract I mean a contract that was in effect from February 1952, to January 1955?

A. Yes.

(Exhibit 17, being a Central States Area Over-the-Road Motor Freight Agreement with Ohio Rider, was marked for identification.)

Q. I show you what has been marked Exhibit 17 for identification, Mr. Oliver, and ask you if you were familiar with that contract.

A. I have read it.

Q. And you were familiar with the provisions of Article 32 of that contract?

A. Yes, sir.

Q. That is the provisions which relates to owner-operators and owner-drivers?

A. That's right.

Q. Have you had any opportunity to compare the provisions of this contract with the provisions of what has now been marked Exhibit 1?

A. No, sir; I haven't.

Q. You had seen Exhibit 1 before you testified here today?

A. Yes, sir.

Q. Studied it?

A. Yes, sir.

Q. And discussed it?

A. Yes, sir.

Q. Does it cost any money to dead-head a tractor and trailer, Mr. Oliver?

A. Yes, sir.

Q. You can't do that for nothing, is that right?

[fol. 72] A. No, sir.

Q. You got to pay for the gas and oil?

A. Right.

Q. And the equipment depreciates and the rubber on the tires are worn, is that right?

A. Yes, sir.

Mr. Denlinger: Speak up.

Q. Did you ever try to calculate the cost of operating a tractor?

A. Yes, sir.

Q. Do you do that periodically, try to ascertain your costs?

A. Yes, sir.

Q. Try to ascertain those costs without respect to the driver's wages; just for the equipment as such?

A. Yes, sir.

Q. You have any current figures with respect to those costs?

A. Not with me; no, sir.

Q. Can you tell us what they are?

A. In the past couple of years they have, approximately have been eight, nine cents a mile.

Q. Are you talking about tractor or trailer?

A. Tractor and trailer.

Q. Costs more to operate a tractor than a trailer?

A. Yes, sir.

Q. Eight or nine cents a mile would be an average between the lower cost of operating a trailer and higher cost of operating a tractor?

A. That's right.

Q. Have you tried to separate them out?

A. No, sir.

Q. When is the last time you made such calculation?

A. The year of '55, '54.

[fol. 73] Q. For the year of '54?

A. Yes, sir.

Q. You haven't made any yet for the year of '55?

A. No, sir; I haven't.

Q. Will you tell us what factors you take into effect when you do make that calculation.

A. Well, I take gas, oil, repairs, tires, depreciation.

Q. Does that figure vary also with the size of the equipment?

A. It does.

Q. What are your tractors, single axle tractors?

A. Yes, sir.

Q. And how about trailers?

A. Tandems.

Q. Tandem trailers?

A. Yes, with two axles.

Q. Perhaps we should explain to the Court what a single axle tractor is.

A. Single axle is steering axle and one set of wheels. And tandem trailers is two axles with two sets of wheels.

Q. What would be a tandem tractor?

A. Three axles, steering axle and two sets of wheels.

Q. Best way for lay people would be two wheels in front and four wheels in back, is that right?

A. I guess so.

Q. Have those costs been rising periodically?

A. Yes, they have.

Q. I suppose those costs would be greater now than they were in 1954.

A. They probably are.

Q. When you drive for either one of these carriers in what order are you assigned out, Mr. Oliver, do you know, do you understand the question?

A. No.

[fol. 74] Q. In what order is your trip assigned out?

A. My trucks hold a turn and whatever turn that truck comes up, if I drive it I go out.

Q. Will you explain what you mean by your truck holding a turn.

A. Both places where my trucks are leased, when they come in they go on the book which is a dispatch and whatever turn they are in they go out. If there are five trucks ahead of it then they go out first, then my truck.

Q. In the industry that is known as first in first out?

A. Yes.

Q. As you get into your terminal you register and the order you register is the order you check out?

A. That's right.

Q. What happens if you are not ready?

A. I tell them I am not ready.

Q. What happens?

A. I go to the bottom of the list.

Q. These drivers—

A. A.C.E. we hold our turn up at the top if our truck is still broke down.

Q. If your truck is broke down?

A. Yes, or don't want to go out, I still hold my turn at the top. At Interstate I go to the bottom of the list.

Q. Is that new at A.C.E.?

A. No, sir.

Q. Is that a special deal that you have at A.C.E.?

A. No.

Q. That has been a condition at A.C.E. for some time?

A. Since I have been there.

Q. You believe that is a condition that holds for owner-[fol. 75] drivers at A.C.E.?

A. I think so.

Q. I recall Mr. Hartline and Mr. Bolvin testifying in this Circuit Court, and they testified it was first in and first out on all their operations. Insofar as you know it is not first in and first out at A.C.E.?

A. They are but if we get up first and don't want to go out or if you are broke down.

Q. You say that also applies where you don't care to go out?

A. It has applied to me; yes, sir.

Q. These drivers that drive your equipment are dispatched by the dispatchers of either A.C.E. or Interstate, is that right?

A. No, sir; not the drivers. The truck is dispatched, but with any of my drivers on it.

Q. The truck can't go without the driver?

A. That's right.

Q. The dispatcher tells the driver where to go?

A. That's right.

Q. He doesn't tell you where to send the driver?

A. No, sir.

Q. The driver gets his orders from the dispatcher?

A. Not all the time. Sometimes he will tell me that he has got a truck load to pick up and I will tell the driver.

Q. You will tell the driver to report because there is a load?

A. That's right.

Q. From that point on the agents of the company direct that driver?

A. I have had them to give me the pick-up slips and I gave it to the drivers and they never seen the driver.

[fol. 76] Q. The pick-up slip is the direction of the company to whoever drives the truck?

A. That's right.

Q. So the orders are actually the company's orders?

A. Right.

Q. Whether they are given directly to the driver or transmitted to the driver from you?

A. That's right.

Q. What is the next time you see that driver after he is dispatched out?

A. When he comes back in.

Q. To whom does he report when he comes back in?

A. He reports to A.C.E. or Interstate and then he comes to me.

Q. He will leave the equipment at A.C.E.?

A. Or bring it to the station to be serviced, or I will get it.

Q. And when he is next out they advise him he is next out?

A. That's right.

Q. You say you hire these drivers yourself?

A. Yes, sir.

Q. Where do you usually get them?

A. Well, I go around and sometimes talk to other owner-operators that knows where there is a fellow looking for a job. Some cases I talk to some of the company people.

Q. Most of them come from the company, don't they?

A. Not all of them; no, sir.

Q. I said most of them are sent to you by the company or some agent or official of the company, isn't that right?

A. I don't have a driver right now that the company sent me.

Q. You have four drivers now, you say?

[fol. 77] A. That's right.

Q. Do they have any helpers, incidentally?

A. No, sir.

Q. If they require any help that help is assigned to them by the carrier?

A. Either that or he gets somebody else, one of the two.

Q. These drivers have to comply with all the rules and regulations with respect to their physical condition as set out by the Interstate Commerce Commission?

A. Yes.

Q. They are examined by the company doctor?

A. At A.C.E. At Interstate I get my own examination.

Q. Interstate—

A. I pay for their physicals there. The company pays for them if they will go to their doctor, but Interstate will accept any doctor I get for the physical.

Q. And the driver has to be acceptable to either A.C.E. or Interstate before they will put him on to have him drive your equipment with their goods on, is that right?

A. Interstate has never asked me only as long as they comply with the physical part.

Q. Hasn't Interstate ever fired anybody that worked for you?

A. No, sir.

Q. How about A.C.E.?

A. No, sir.

Q. Never?

A. Not that I can recollect.

Q. You have quite a turnover, don't you?

A. Not too much.

Q. How long have these four drivers been in your services?

A. There is three of them been with me within a year [fol. 78] and one about two years.

Q. That is pretty young in service for over-the-road trucking, isn't it?

A. Yes, I would say so.

Q. You have already testified as to what the Interstate Trucking Company pays?

A. Yes, sir.

Q. To whom do these drivers turn in their log sheets, Mr. Oliver?

A. To the companies.

Q. That is one of the regulations of the Interstate Commerce Commission, isn't it?

A. I guess so.

Q. And do you know of your own knowledge whether they are required to check in at certain points along the route?

A. I think so. They have time clocks at two places I believe at A.C.E. At Interstate we don't have any.

Q. Those are known in the industry as check points?

A. Yes, sir.

Q. These drivers are required to check in at these points enroute?

A. At A.C.E.

Q. Doesn't the other one have a check point?

A. No, sir.

Q. Do they have a road patrol?

A. Not that I know of.

Q. At these check points they also get instructions or change instructions or other directions with respect to their loads?

A. No, sir.

Q. Never do that?

A. No, sir. All they do is punch a clock in and out.

Q. Where is the clock located?

A. Located in service stations.

[fol. 79] Q. Those the only two check points that A.C.E. has?

A. Two on the north route and one on the south route.

Q. They are just time clocks?

A. Yes.

Q. They never leave messages?

A. Not unless they want to get hold of somebody or we want to get hold of somebody.

Q. If there is a change with respect to a particular assignment they will leave word at these check points?

A. They could have. That has never happened to me.

Q. Are you familiar with these bulletins that these companies issue with reference to their driver?

Mr. Denlinger: Object to this. I think it is irrelevant. I didn't wish to object to anything Mr. Previant feels might be pertinent, but it looks to me we are going far afield.

The Court: Well, it isn't clear to me what the relevancy is, but I choose to overrule it.

Mr. Previant: The objection that has been made is the same objection I made.

The Court: Answer.

A. What they put on the bulletin boards I look over.

Q. What they put on the bulletin boards applies to the people who drive your equipment as well as the people who drive company equipment?

A. Some of them do and some of them don't. They specify on the heading whether they are for company drivers or owner-operators.

Q. And sometimes both?

A. Yes.

[fol. 80] Q. That is also true with respect to their service manual, isn't it?

A. I guess it is, yes.

Q. The responsibility for compliance with the rules and regulations of the Interstate Commerce Commission is in A.C.E. and Interstate Truck Service, isn't that right?

A. That's right.

Q. Failure of any of the drivers of your equipment to comply with any such regulation becomes their responsibility rather than yours?

A. I would say yes.

Mr. Previant: That is all.

Mr. Knee: May I ask one or two questions?

The Court: You may—ordinarily you represent the very same people?

Mr. Knee: No, I am counsel for the State of Ohio unions.

On this last case Judge Emmons permitted it. He is counsel for the Central States Area and I have some things—

Mr. Denlinger: If your Honor please, he asked me if—
Mr. Knee asked if we should ask your Honor for that permission before we got started and I told him I would not object, your Honor. He does represent different interests.

The Court: When two or three lawyers are seated at that trial table representing—

Mr. Denlinger: Technically they represent two different parties.

Mr. Knee: We do represent two different parties.

The Court: Go ahead.

[fol. 81] Cross examination.

By Mr. Knee:

Q. Now, Mr. Oliver, you filed this petition, didn't you? You are the Plaintiff in this case?

A. Yes.

Q. And you already testified that you have a number of tractors, six, I believe, and four trailers?

A. Right.

Q. And that you operate one of those?

A. Yes, sir.

Q. I gathered, however, that the operation by you, Mr. Oliver, is fairly infrequent.

A. That's right.

Q. Now, in your peition (sic) that you filed in this Court you state that the action is brought on behalf of yourself?

A. Right.

Q. And all others who are similarly situated, who are owners of motor freight equipment and that they are too numerous to mention?

A. That is right.

Q. And I presume that you mean that these various individuals on whose behalf you bring this and who are similarly situated are owner-operators. That is what you mean, isn't it?

A. Yes, sir.

Q. And that as such they own equipment, right?

A. Right.

Q. Either one or more pieces of equipment, right?

A. Yes, sir.

Q. And also those who drive one piece of equipment, you mean that too, don't you?

A. That's right.

Q. And also those who operate under leases leasing their equipment to various companies, right?

[fol. 82] A. Not unless he drives.

Q. Do you lease other pieces of equipment which you do not drive?

A. Yes, partially.

Q. Then do you differentiate between that and other owner-operators with reference to leasing equipment which they do not drive?

A. I do not quite understand you there.

Q. I asked you the question whether or not these other people for whom this action is also brought were owner-operators and you said yes.

A. That's right.

Q. Those who own and drive their own equipment?

A. Right.

Q. In which leases are made to the company for whom the driver makes these runs like you for A.C.E.?

A. That is right.

Q. That is what you are talking about, isn't it?

A. Yes.

Q. And also other equipment that they have, that they also lease even though other people drive it, you mean that too, don't you?

A. If they want to drive it at times; yes, sir.

Q. Does that same situation apply to you?

A. Yes, sir.

Q. It does. Now, let's see whether it does. How many tractors do you have?

Mr. Denlinger: Object. We have been through it.

The Court: Objection sustained.

Q. How many leases, Mr. Oliver, do you have?

[fol. 83] A. I have a lease for every piece of equipment. I might not have them all here with me.

Q. Do you drive every piece of equipment?

A. Sometime or other I probably do.

Q. Now, I hand you just as I pick them up here two exhibits, one is Plaintiff's Exhibit 13 and the other happens to be Plaintiff's Exhibit 4, is that correct?

A. Yes, sir.

Q. Now, Mr. Oliver, both of those are your leases, aren't they?

A. That's right.

Q. Now, I want you to tell the Court whether they are the same in their terms and conditions.

A. No, sir.

Q. They are different, aren't they?

A. Yes, sir.

Q. Mr. Oliver, that same thing would be true, wouldn't it, of other owner-operators who are supposed to be similarly situated, all leases are not alike, are they?

A. No, sir.

Q. The same as yours are not alike?

A. That is right.

Q. Also you operate as I understand it, on a tonnage basis?

A. One place; yes, sir.

Q. And at the other place you operate on a percentage?

A. Yes, sir.

Q. That also would be true, wouldn't it, of other owner-operators?

A. That is right.

Q. They all wouldn't operate on a tonnage, would they?

A. No, sir.

Q. They all wouldn't operate on a percentage, would they?

[fol. 84] A. That is right.

Q. So the conditions there would be different, wouldn't they?

A. That's right.

Q. And let's go one step further, if I may, there are some who operate on mileage, isn't that right?

A. I guess so.

Q. And so, therefore, we have about three methods of payment, don't we?

A. That is right.

Q. Let me name them for you. Correct me if I am wrong. We have got a tonnage basis.

A. Yes.

The Court: Just a moment. We have been doing an excellent job of keeping this brief. Let's not be repetitious.

Mr. Knee: I don't think I am.

The Court: It sounds to me like you are summarizing what he has already said.

Mr. Knee: I should like to state that—

The Court: It won't be necessary.

Mr. Knee: I would like to say this, I am pointing my questions to his right to represent all of these people and that has not been touched by Mr. Previant, and that is the point I want to make.

The Court: I don't want you to cover something that has been covered.

Mr. Denlinger: I am objecting to that on the ground that your Honor thought it was there, not what Mr. Previant covered, but what Mr. Knee covered.

The Court: I know this is cross examination. Let's [fol. 85] avoid repetition.

Mr. Knee: Thank you, your Honor.

Q. Now, some of these owner-operators, I believe I asked you this—some of these owner-operators have just one piece of equipment and others have more than one?

A. Yes.

Mr. Knee: I think that is all.

The Court: Now, counsel for any other defendants wish to examine this gentleman?

Very well. Step down.

Mr. Denlinger: I want to ask him one question.

The Court: Oh, I am sorry.

Mr. Denlinger: Okay.

Redirect examination.

By Mr. Denlinger:

Q. Mr. Oliver, in the event that there are any charges made because of a fine or over-loading or any violation of the L.C.C. or other regulations, who ultimately pays at A.C.E. and the Interstate Truck Service, the charges that are so made?

A. I do.

Q. In other words, whatever comes out of the enforcement of regulations that the company finally pays because of its responsibility to the body that assesses it, these companies make those charges to money that is due you?

A. That's right.

Q. For hauling and deduct it from the amount?

A. Yes, sir.

Q. So that the company does not bear the final responsibility of it?

A. No, sir.

Mr. Knee: Pardon me, your Honor, I don't wish to interrupt but I wish your Honor would call Mr. Denlinger's attention to the fact that he is directly examining his client.

Mr. Denlinger: I am through, Mr. Knee.

Mr. Knee: I know you are.

The Court: We are doing very well.

Mr. Knee: I know we are, your Honor.

The Court: Anything further?

Mr. Knee: I think that is all.

Mr. Denlinger: You may step down.

(Witness excused.)

The Court: Let's take a recess, fifteen minutes now.

RECESS

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Denlinger: Your Honor, please, there is just one thing I would like to present to this Court and then I am resting, or resting with the reservation that I might be permitted to do it.

The A.C.E. furnished a letter, a copy of which I thought I had in my file to Oliver, but which I don't find in my file, in which they directed there would be a cancellation of our lease by virtue of this contract which brought about the filing of the petition and the temporary injunction.

Now, I want somebody from the company to bring that [fol. 87] letter in who can testify it was delivered to us and other owner-drivers and with that we rest, your Honor.

The Court: All of the exhibits that have been offered—

Mr. Denlinger: You have received them. I would like to ask in connection with the Certificates of Title, not necessarily with reference to the contracts although they are supposed to be with the equipment as we drive, with counsel's permission and Court's permission, I would like to photostat those items and substitute the photostats for the originals.

The Court: Well, can we grant that request? Is that agreeable?

Mr. Knee: Yes.

The Court: Photostatic copies of the exhibits may be substituted.

Mr. Denlinger: Counsel have asked me also about copies of the agreements at both places, and I shall furnish those to counsel so that these may be intact here with the stenographer. Mr. Knee hasn't requested it but some others have, and if he wants it we will see that he gets it, too.

The Court: I will permit you in making that reservation to rest, so at any time you can offer that.

Any of the Defendants prepared to go forward?

MOTIONS BY CERTAIN DEFENDANTS TO DISMISS AND DENIALS THEREOF

Mr. Petri: May it please the court, as counsel for the Defendant F. J. Egner and Leonardt Trucking Company, Inc., for the reason that none of the testimony offered by

the Plaintiff mentioned either of said Defendants in any [fol. 88] manner, I move the Court that they be dismissed as party defendants to this action. There is no testimony, your Honor, mentioning either of these Defendants in any way except in the petition, and there is no proof offered.

The Court: Which Defendants are those?

Mr. Petri: F. J. Egner and Son, and Leonardt Trucking.

The Court: There are many names of Defendants whose names haven't been mentioned at all.

Mr. Denlinger: Your Honor, please, I don't know what the gentleman's answer contains.

Mr. Petri: I will give you copies of the answer. I think that is immaterial, what the answer contains. It was up to the Plaintiff to show that these Defendants were proper parties in this action and the Plaintiff sustained a proper cause of action against them.

Mr. Denlinger: May I inquire of counsel for Leonardt, and Egner and Son whose answers I haven't seen before, you are a signatory to the Over-the-Road Agreement?

Mr. Petri: I can only say not to my knowledge. I inquired of both of my parties and they said they were not signatories to this agreement.

Mr. Denlinger: We would accept the position of dismissal if they are not signatories to this contract. He does not deny that he is in this answer. If he is a signatory to the contract that has been received and on which we rely as being the thing that is prohibited, then he should not be dismissed. If he is a signatory there can be no question [fol. 89] about it. Whether he combined or what not, the fact that he signed I think would be all that we need.

Now, of course, we are not going to call all of these Defendants because many and most of the answers answer that question, your Honor, and they have put in a pleading here on that point, but I would say to your Honor, subject to the determination of whether they are signatories to the contract, that we would be agreeable if they are not, that they would properly be dismissed.

Mr. Petri: May I have just a half minute. I still adhere to the fundamental principle that the Plaintiff must prove his case and the Plaintiff has not produced a scintilla of evidence that we are signatories here, and, therefore, I

think we are entitled to be dismissed. Counsel will concede that—

The Court: I haven't been able to examine the file. I won't let you out at this time unless he consents to it.

Let's go forward.

Mr. Previant: We have a motion which is very similar in nature in which we urge for the serious consideration of the Court, and that is whether or not this is a class action; that there is no proof with respect to that particular carrier.

The Plaintiff comes in here alleging under paragraphs two and three, paragraph two that this action is brought on behalf of all other owners of motor freight who are similarly situated, who are united in interest, and too numerous to mention, and goes on to talk about the Plaintiff [fol. 90] owning one or more pieces of equipment.

As the evidence is demonstrated, if anything, you have in this particular Plaintiff, you have a very unique situation. You have an owner-operator who owns four, five, or six pieces who rarely drives, who has employees which drive his equipment. He has demonstrated on cross examination and has acknowledged on cross examination that there are many owner-operators; that the lease arrangements with which these other owner-operators operate may be entirely different. As a matter of fact, he has introduced two wholly different types of lease arrangements.

Mr. Knee pointed out in his Article 32, which is here under attack, the union says on its very face it is a device for the purpose of preserving the wage rates and working conditions of drivers as such. It applies only to that owner-driver who drives his own equipment, and it is for the purpose of saying although we will pay you ten cents we will only pay you two cents a mile for the use of your equipment and it costs eight cents to operate your equipment and it is within the rule of reason or logic.

Now, we are confronted here with a challenge to that article as it applies not only to Mr. Oliver, but as it applies to the hundreds of others, thousands of others, not only in Ohio, but throughout the area, whose situation is completely and entirely dissimilar to Mr. Oliver's situation.

It seems to me that if Mr. Oliver wants a ruling with respect as to whether or not this particular contract is [fol. 91] violative to any specific statute to either A.C.E. or Interstate Trucking, then it is his case and should be so limited. But if, as it appears from these pleadings, Mr. Oliver seeks to void the provisions of this contract as it applies to every owner-operator, then we can be here indefinitely because we will have to take each and every carrier and each and every owner-operator and demonstrate, we hope to the satisfaction of the Court, that in all of these instances there is reason to apply a different rule of law if there is going to be an adverse ruling in this case which we are going to argue subsequently, but that is the position in which we find ourselves.

Here is a man who is a sport in the owner-operator field and he himself challenges a contract. Many of these leases say specifically that the driver of the equipment is an employee. All of these things we would have to bring into the Court to show that you cannot have a class action involving hundreds of employers and thousands of employees. And it seems to me this action must be dismissed as a class action. And if there is an effort then to start over for an individual or for a group of individuals, which on the face of the pleadings and evidence are truly joined in interest, have a common interest and common problem, that would be the time to determine it as to that particular group. But until such time it would seem that the time of this Court is being imposed upon because of the effort that is being made here. This Court cannot enter any judgment than what would fix Mr. Oliver's status.

[fol. 92] Mr. Denlinger: Would you hear me for a moment, your Honor?

I think Mr. Previant has missed the entire point of this case.

What the Plaintiff is asking for this Court to consider are the terms of a contract that applies not only to Mr. Oliver, is not limited to Mr. Oliver, but applies to all people who lease equipment to carriers in the State of Ohio as well as in eleven other states.

Now, our position is this, your Honor: It doesn't matter that the leases which Mr. Oliver has with two carriers are

different in their terms and conditions. We have dismissed the money angle out of this case. There is no concern as to whether or not Oliver would be entitled to damages and somebody in Cincinnati be entitled to damages on a different method of computation, because it might be by percentage or mile as his would be by tonnage.

The point in this case, your Honor, is the receiving in evidence of a contract which we say on its face, the interpretation given to the terms applying to owner-operators generally, is in violation of the Valentine Act.

Again I say it matters not what kind of an individual contract they have with the carrier. If this contract is enforced—and it would have been enforced in Ohio except for an injunction with all of these Defendants and all other carriers—then you would have a uniform lease agreement which might give people then a class action.

[fol. 93] Irrespective of the wording of the allegation of this petition as to being a class suit, this is only a suit by an owner-operator of the general class that is discussed in this agreement. And so, your Honor, we should not have any dismissal for want of it being a class action against all, nor should it be limited only to A.C.E. and to Interstate, but we should ask this Court to determine whether or not this contract contains the provisions which the Valentine Act of Ohio says cannot be made in Ohio and if made is void and against public policy of the State.

Now, if Mr. Previant and Mr. Knee should want me to ask your Honor to re-open the case and show that all these people are—substantial part of them have signed as they have stated in their answers that would only consume time needlessly, your Honor.

It makes no difference what caused or preceded the making of this agreement. We stayed away from any charges of guns at their backs or what-not. We have stayed away from any interference at any points since this contract was made because we think the kernel of the nut lies in your Honor looking at this agreement and saying to us in Ohio does this contract contravene Revised Statutes 1331. So that this is a simple question and it should not require any delay or additional testimony to ascertain whether it be solely for Oliver and A.C.E. or whether or not it is

for all owner-drivers throughout the State. What does this contract mean?

The Court: I am not going to make any rulings in this [fol. 94] case that will have a final character to them until I am more fully informed as to what the law is. I haven't seen this case until this morning. I have had no contact with it. I am entirely unfamiliar with the law that pertains to the issues. I cannot see where anybody is going to be harmed by continuing this matter.

We will go forward.

Mr. Knee: If your Honor please, at this time—

The Court: Motions made thus far are overruled.

Mr. Knee: At this time, and for the record, counsel for the Defendant unions and business representatives who were parties to this suit would like formally to make a motion to dismiss this action on the ground that this Court does not have exclusive jurisdiction to determine the issues and subject matter in this case.

We do that for the record.

The Court: All right.

Mr. Knee: I have handed your Honor a memorandum this morning. I have given counsel a copy of that memorandum and I shall not argue it now. We feel that that memorandum will state our position, both by reasoning and authority, in connection with the dismissal of this suit.

Mr. Rabe: On behalf of the Defendants I represent I would like to make a motion similar to the one made on behalf of the other two defendants.

The Court: Your motion is overruled and I will overrule Mr. Knee's motion. These are questions that can be [fol. 95] saved. If I find that you should be dismissed for jurisdiction or any other reason I will do it later, but I don't want to make any ruling of a final character at this time.

Can we go forward, Mr. Knee?

Mr. Knee: Yes, just a moment.

KENNETH A. BURKE, having previously been sworn, resumed the witness stand and testified further as follows:

Direct examination.

By Mr. Previant:

Q. Mr. Burke, you have already been sworn.

Q. How long have you been associated with Teamsters Local 24 in an official capacity?

A. Fourteen and a half years.

Q. Prior to that time were you a truck driver?

A. For Motor Express, Inc.; yes, sir.

Q. During the time you have been associated with the union have you participated in local negotiations?

A. Yes, sir.

Q. Have you participated in state-wide negotiations?

A. Yes, sir.

Q. Have you participated in area-wide negotiations?

A. Yes, sir.

Q. Will you state whether or not those negotiations included what is commonly known as over-the-road trucking.

A. Yes, sir.

Q. Can you distinguish for us over-the-road trucking and local trucking?

A. State that again.

[fol. 96] Q. Will you distinguish for us the difference between over-the-road trucking and local trucking.

A. The difference between the two, over-the-road covers all operations with the exception of within twenty-five miles of the city.

Q. What is covered within twenty-five miles of the city?

A. Local cartage agreement.

Q. Are you familiar with the number of carriers that have been parties to the agreement Exhibit 1?

A. Yes.

Q. How many?

A. Between 450 and 500.

Q. Can you tell us how many employees are covered by that contract in Ohio?

A. Between five and six thousand.

Q. Are there between five and six thousand who work under the provisions of Over-the-Road Motor Freight with the Ohio Rider?

A. Yes, sir.

Q. Will you state whether or not that figure includes what has been referred to as owner-drivers?

A. Yes, sir.

Q. You know the percentage—what percentage of employees covered by this contract that would fall within the classification of owner-operator or owner-driver?

A. Within my union, roughly between five and ten percent now.

Q. You have any idea what that figure would be state-wide?

A. No, I wouldn't.

Q. Do you know, Mr. Burke, how many employers in the Central States Area have become parties to this uniform Over-the-Road Agreement?

A. Between 3,000 and 3,500.

Q. Do you know, Mr. Burke, how many employees, approximately, would be covered by this agreement on an [fol. 97] area-wide basis?

A. You mean the whole area as a whole?

Q. Yes.

A. Between forty-five and fifty thousand.

Q. Can you give us a figure, Mr. Burke, with respect to the percentage of owner-drivers in that forty to fifty thousand?

A. I wouldn't be able to give you that figure.

Q. You know whether it would be as much as, greater, or less than the figure you have given for Ohio?

A. I would say roughly it would be about the same.

(Exhibits 18, 19, 20, and 21, being Central States Area Over-the-Road Motor Freight Agreement with Ohio Rider, were marked for identification.)

Q. I show you, Mr. Burke, what has been marked Exhibit 18 and ask you if you can identify that exhibit.

A. Yes. That is '52, '55 contract.

Q. For what area?

A. Central States Over-the-Road Motor Freight Agreement.

Q. As a matter of fact that is an exact copy of a contract that has been offered before?

A. Yes, sir.

Q. Will you tell who the parties are.

A. Interstate Truck Service.

Q. Will you please look at the signature page. Is there a signature representing Interstate Truck Service?

A. Yes, sir.

Q. When is that contract dated?

A. February 1953.

Q. Is that an original from your files?

A. Yes, sir.

Q. I show you what has been marked Exhibit 19 for identification and ask you what that is:

A. Interstate Truck Service.

[fol. 98] Q. What?

A. Interstate Truck Service, Inc.

Q. What is the document?

A. Central States Over-the-Road Motor Freight Agreement.

Q. That is an exact copy of Exhibit 1?

A. Yes, sir.

Q. Will you turn to the signature page. Who signed that?

A. George L. Hannon for Interstate Truck Service dated June 1955.

Q. I show you what has been mared (sic) Exhibit 20 for identification and ask you what that is.

A. That is known as Central States Area Over-the-Road Motor Freight Agreement.

Q. That is the one referred to from '52 to '55?

A. Yes.

Q. Who are the parties to that?

A. A.C.E.

Q. Does that bear a date?

A. January 15, 1953.

Q. I show you what has been marked Exhibit 21 for identification and ask you what that is.

A. Central States Area Over-the-Road Motor Freight Agreement.

Q. That is also an exact duplicate of Exhibit 1?

A. Yes.

Q. Who are the parties to that agreement?

A. A.C.E. and Local 24.

Q. When was that?

A. April 27, 1955.

OFFERS IN EVIDENCE

Mr. Previant: We offer Exhibits 18, 19, 20, and 21.

Mr. Denlinger: No objection, your Honor.

The Court: Admitted.

(Exhibits 18, 19, 20, and 21 received in evidence.)

[fol. 99] Q. Will you state, Mr. Burke, in what manner your local union participates in the negotiation of this area agreement.

A. First thing, our local calls a meeting of all over-the-road drivers that are covered by this contract and from that meeting we draft proposals offered by the membership to the union to be sent into what is known as the Drafting Committee of the Central States Area Over-the-Road Motor Freight Agreement. From the proposals that are offered to that Drafting Committee from all local unions within this State, that committee from there goes to the Negotiation Committee which sits down with the employer and negotiates a contract subject to the approval of the membership of each and every local union.

Q. When such contract is negotiated is that submitted back to the local?

A. Yes, for ratification.

Q. Was that done in 1952 to 1955 and 1955 to 1961 contracts?

A. It was.

Q. Does your union have regular meetings?

A. Yes, sir. First Thursday of every month. It is posted on the bulletin board.

Q. What bulletin board?

A. Bulletin board of companies.

Q. With respect to contract negotiation, are they notified specifically with respect to meetings for that purpose?

A. Have special bulletins drafted.

Q. Where are those special bulletins posted?

A. At each and every bulletin board around each and every time clock.

[fol. 100] Q. Of the companies under contract?

A. Yes, sir.

Q. Could owner-operators ever attend your meetings, Mr. Burke?

A. Yes.

Q. Have they ever been excluded from attending meetings?

A. Not since my term of office.

Q. How long have you been in office?

A. Fourteen and a-half years.

Mr. Previant: That is all.

Further cross examination.

By Mr. Denlinger:

Q. Mr. Burke, all of the employers in your district have signed the contract already, haven't they?

A. As far as I know; yes, sir.

Q. You stated a moment ago that from 3,000 to 3,500 employees have been covered in Ohio and forty to fifty thousand in the entire area of the twelve states. You remember that?

A. I don't think I made that statement.

Q. What did you say?

A. I said the coverage in the State of Ohio as far as employees covered by this over-the-road contract is five to six thousand. I said approximately. In the Central States there is 3,000 to 3,500 employers in the area and forty to fifty thousand employees.

Q. Now, how many of the 450 to 500 employers in the State have signed the contract?

A. I can't answer that, sir, only for my own local.

Q. How do you know there is 450 to 500?

A. Because we have at times before negotiations had a [fol. 101] list of each and every employer who was covered by contract.

Q. Don't you have such a list now?

A. In our office, I imagine.

Q. Here in Akron?

A. Yes.

Q. So you can bring it in for us tomorrow morning, the number of employers in the State of Ohio that signed this agreement?

A. I don't know whether I can for the State; I can for my local union.

Q. You said you had a whole list for the whole State.

A. I said we did, Stan, but if we don't have it we can get it from the State.

Q. You will bring what information you have on that into Court?

A. Yes, sir; if I can get it.

Q. Now, is there any change in the definition of owner-operators or persons who own leases or operate a team in the State of Ohio now with reference to owner-operators different from what appears in Exhibit 2 your constitution?

A. I would have to look at the constitution. What was that question again?

(Question read.)

A. I can't answer that.

Q. Why can't you?

A. I just can't answer it, that is all.

Q. Isn't that the last constitution that you put out in the teamsters?

A. Yes, sir.

Q. Do you know of any orders or regulations with reference to owner-operators that is different from what is in [fol. 102] that constitution?

A. I can't answer that question.

Q. You don't know of any, do you?

A. I can't answer your question.

Q. You can answer whether you know or not, if there is any changes, can't you?

A. I cannot.

Q. Well, to the best of your knowledge, the constitution

correctly defines what the teamsters mean by an owner-driver, does it not?

A. I think that is clear; yes, sir.

Q. Now, you recall of Mr. Oliver's testimony regarding you and another gentleman telling him he couldn't be at a meeting, you recall that incident?

A. I recall the meeting.

Q. You recall the meeting?

A. Yes, sir.

Q. You recall of you and Mr. Allhouse making that statement?

A. No, sir.

Q. You say you did or didn't?

A. I did not make that statement.

Q. Now, have you been out to the Johnson Steel and Wire Company out here in East Akron, toward the north-east end of Akron?

A. No, sir.

Q. Who services that company?

A. It may be any agent of ours.

Q. What?

A. It may be any agent of ours.

Q. What agent would normally have that jurisdiction?

A. We assign them out of different territories.

Q. Doesn't Mr. Allhouse service that one?

A. He may at times.

[fol. 103] Q. Doesn't Mr. Allhouse service the Interstate?

A. Yes, sir.

Q. And didn't you personally contact A.C.E. and many others regarding the enforcement of this over-the-road contract?

A. Which over-the-road contract?

Q. The 1955 contract.

A. No, sir.

Q. But for the injunction that Judge Harvey issued in this case you would have enforced the terms of that agreement in your area, wouldn't you?

A. I would have to say yes.

Mr. Denlinger: That is all.

The Court: Any other attorneys desire to examine this man?

Apparently not. You may step down.

(Witness excused.)

The Court: Who next?

Mr. Knee: We have no more witnesses this afternoon. We expect one from a distant point to be in in the morning.

Mr. Previant: With the Court's indulgence we would appreciate a recess.

Mr. Denlinger: We have no objection.

The Court: We will resume at nine in the morning. Is that all right with everyone?

Mr. Denlinger: Fine.

Mr. Knee: Fine.

The Court: All right, nine in the morning.

(And thereupon, at 3:20 o'clock p.m. the Court adjourned [fol. 104] until 9:00 a.m. February 21, 1956, at which time Court having convened pursuant to adjournment the trial of said case proceeded as follows:)

Mr. Previant: Is the Court ready?

The Court: Yes.

Mr. Previant: Mr. Blunden.

FRANK O. BLUNDEN, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Previant:

Q. State your full name and address for the record.

A. Frank O. Blunden, 19217 Murray Hill, Detroit, Michigan.

Q. What is your business or occupation, Mr. Blunden?

A. Vice President of Kramer Brothers Freight Lines.

The Court: Now, Mr. Blunden, I must hear you. When you speak and turn that way toward Mr. Knee entirely I can't hear you.

Q. What is Kramer Brothers Freight Lines?

A. Common carrier by motor truck.

Q. Where is its principal office?

A. 4195 Central, Detroit, Michigan.

Q. Does it maintain any offices or terminals in the State of Ohio?

A. Yes, sir; Toledo and Cleveland, Ohio.

Q. Does it have labor union contracts?

A. Yes, sir.

Q. With what local union in Cleveland?

A. Twenty in Toledo and 407 in Cleveland.

[fol. 105] Q. Do those contracts cover drivers who live in the State of Ohio?

A. Yes, sir.

Q. How long has your company had contractual (sic) relationships with those two local unions?

A. Since approximately 1936 or the early part of 1937.

Q. These contracts cover the over-the-road motor freight transportation operations of your company?

A. Yes, sir.

Q. Does your company have terminals in any other cities and states?

A. We have terminals in Chicago, Pittsburgh, Baltimore, Philadelphia, Carlstadt, Brooklyn, Lansing, Saginaw, Detroit, Buffalo, and one more, upper part of New York State, the name escapes me.

Q. How does your company rank with other common carriers in the transportation of motor freight interstate?

A. In the gross volume of business we probably rank in the first fifteen.

Q. That is national?

A. Yes.

Q. You say that you are vice president of that company?

A. Yes, sir.

Q. And how long have you had that position?

A. Approximately fifteen or sixteen years.

Q. How long have you been associated with the company?

A. Close to twenty years.

Q. Prior to that time were you also employed in the trucking industry?

A. Yes. I was president of the White Star Transit Lines and vice president of Guardian Transit Lines.

[fol. 106] Q. What are your duties?

A. Principally, industrial relations at the present time.

Q. How long have you been engaged in the field of industrial relations on behalf of freight companies, Mr. Blunden?

A. Since the latter part of 1930.

Q. Does your company require certificates from any state or federal regulatory bodies?

A. Yes.

Q. What certificates do they require?

A. State Public Service Commission rights, and Interstate Commerce Certificate.

Q. When you said that your company ranks within the top fifteen in gross revenues can you give us some indication of what the gross revenues of that company would be without telling us specifically, say in excess of a certain amount?

A. In excess of \$15,000,000.

Q. What kind of equipment does your company operate?

A. Well, you mean power units?

Q. Yes, the nature of the power units and trailers, first in numbers.

A. Well, at the present time we are operating about close to 400 pieces of road power, and approximately, I would say, nine hundred some trailers.

Q. When you say road power what do you mean?

A. Tractors used pretty well exclusively on over-the-road transportation.

Q. And are those tractors and trailers all of uniform size, weight, and power?

A. No.

Q. What is the variation of the tractors?

[fol. 107] A. They will vary from heavy duty diesels down to 427 inch gas jobs.

Q. And how about the number of axles?

A. Well, we have considerable tandem axle tractors and tandem axle trailers.

Q. You also have single axle tractors?

A. Yes, sir.

Q. In the operation of that equipment, Mr. Blunden, does the company employ drivers directly and furnish them the equipment?

A. We employ all drivers directly.

Q. Does the company furnish all of its own equipment?

A. No; no, sir.

Q. Will you explain what you mean by that.

A. We have what we term owner-operator, that is one type of operation. Then we have what we term the fleet owner who has multiple pieces of equipment that we lease from him.

Q. Owner-operator is the one who owns only one piece of equipment?

A. He owns and drives his own piece of equipment.

Q. Does the fleet operator also drive a piece of equipment?

A. Sometimes.

Q. Is it common in the industry for a fleet operator to also drive his own piece of equipment?

A. I couldn't say it is common, but there are certain fleet owners that will occasionally drive their own equipment.

Q. Are there any fleet owners that regularly drive their own equipment in your experience?

A. Not in our company.

Q. The drivers of the equipment owned by fleet owners are hired by whom?

A. They are hired by Kramer Brothers.

[fol. 108] Q. How are they carried on your records?

A. They are carried as company employees on our records and we put them through all the examinations that are required by the Interstate Commerce Commission for safety reasons.

Q. Who pays them their salary?

A. We do; the company.

Q. Who pays Unemployment Compensation?

A. We do.

Q. Who pays the Workmen's Compensation?

A. We do.

Q. Social Security?

A. We do.

Q. With respect to the owner-operators, as distinguished from the drivers of fleet equipment, how are they carried on the records?

A. As a driver he holds seniority with the company regardless of his piece of equipment.

Q. Is his treatment by the company any different than the treatment of the drivers of the fleet owned equipment?

A. Well, as a driver, no.

Q. Is he carried as an employee of the company?

A. Yes.

Q. Do you pay the Social Security taxes?

A. Yes.

Q. Unemployment taxes?

A. Yes.

Q. Workmen's Compensation taxes?

A. Yes.

Q. Income taxes?

A. Yes, sir.

Q. Hired by the company as an employee?

A. That is correct.

Q. In addition to those two types of employees do you have a third type of employee or any other type of employee?

A. I don't believe I understand that question.

[fol. 109] Mr. Previant: Withdraw the question.

Q. Do you have any equipment which the company itself owns?

A. Yes.

Q. You hire people to operate that equipment?

A. Yes, sir.

Q. Those people are carried on your records as employees?

A. Yes, sir.

Q. As the others are?

A. Yes, sir.

Q. Approximately how many owner-operators are employed by the Kramer Brothers Freight Lines?

A. Approximately fifty-five.

Q. Now, you said, Mr. Blunden, that you took care of industrial relations for your company?

A. Yes, sir.

Q. How many employees does your company have altogether?

A. You mean union employees and others?

Q. Employees in the operating end, in the driving end.

A. In the drivers?

Q. Yes.

A. Well, city and over-the-road, we would approximately be about some place between 600 and 650 or 75.

Q. How many would you say are covered by Area Over-the-road Motor Freight Agreements?

A. I would say about 400.

Q. That would include the Central States Agreement?

A. Yes.

Q. As well as other areas. Any other area agreements under which your drivers operate in over-the-road operation?

A. No. You might call the recently New York State contract an area contract. We have drivers involved in that.

[fol. 110] Q. I show you what has been introduced as Exhibit 1, Mr. Blunden, and ask you whether or not your company is a party to that agreement.

A. Yes, sir.

Q. With respect to operations in all the states covered by this agreement?

A. Yes, sir.

Q. Now in addition to handling the industrial relations of your company are you also engaged in any other labor relations activities?

A. Yes, I am Chairman of the Board of Directors of the Michigan Employers Association.

Q. What is the Michigan Employers Association?

A. It is an association of truck operators formed to function with labor.

Q. They negotiate labor agreements?

A. They do negotiate labor agreements.

Q. What other activities do they engage in?

A. And in the— In other words, in the working out of the contracts after they are negotiated.

Q. Administration of them?

A. Yes, sir.

Q. Handle grievances?

A. Yes, sir.

Q. Is there any other activity that you are engaged in in the labor field?

A. Yes, I am Chairman of the Negotiating Committee of the New York State Operators Group and sit on the Board of the Central States Employers Association.

Q. What is the Central States Employers Association?

A. It has the same function as our State organization does, but it is an over-all body of the states together in the [fol. 111] administration and negotiation of the Central States Contract.

Q. Will you explain briefly how this area employers committee of which you are a member is composed, just a little bit more detail.

A. For the administration or negotiation?

Q. Both.

A. In the negotiating of the contract the various states involved, which at the last contract negotiating contract time there was thirteen states, got together for the negotiating of the contract with the union. Those states send so many representatives to represent them in the negotiation.

Q. When you say states are you speaking of employer groups?

A. Employer groups in each state. Those people who are representatives of their state pick so many people to represent them in negotiation and in the administration of the contract. They follow pretty well the same procedure of picking a committee to represent them on all grievance hearings and all interpretations of the contract.

Q. Does that include employer representatives from the State of Ohio as well as Wisconsin, Michigan, and all other states mentioned in the preamble of Exhibit 1?

A. Yes, sir.

Q. How long have you as an individual or in a representative capacity been associated with the negotiation of the Central States Over-the-Road Motor Freight Agreement?

A. Since approximately some time in 1936.

Q. You know when the first area-wide negotiation for this type of agreement took place?

A. To the best of my knowledge that was 1936.
[fol. 112] Q. You were at the first effort made to negotiate this type of agreement?

A. Yes, sir.

Q. Have you been associated with these negotiations since that time?

A. Yes, sir.

Q. I show you again what has been introduced here as Exhibit 1, Mr. Blunden, and ask you to look at the signature page. Does your name appear on that signature page?

A. Yes, sir.

Q. And the names of a number of other associations appear, is that right?

A. Yes, sir.

Q. Can you identify for us, Mr. Blunden, the name of any association or associations which are comprised principally of Ohio domiciled employers?

A. Yes, sir.

Q. Which ones are they, Mr. Blunden?

A. The Cleveland Group of Certificated and Permit Motor Carriers, Inc., and there should be another one here. The Steel Truckers Employers Association, Inc. is primarily an Ohio organization. And the individual companies who signed it from Ohio, Cleveland, Columbus and Cincinnati Highway, Inc. and Associated Companies.

Q. Do you know of your own knowledge whether there was a committee from Ohio, or organization from Ohio?

A. Yes, sir.

Q. Which participated in those negotiations?

A. Yes, sir; Labor Relations Department, Ohio Truck Association.

Q. The initials "O.T.A." appearing on Page 62 indicate what?

A. Ohio Truck Association.

Q. And with respect to the labor unions involved, do you know of your own knowledge whether or not the local labor unions of the State of Ohio also participated actively in those negotiations?

A. Yes, sir.

Q. I call your attention to Article 32 of Exhibit 1, Mr. Blunden, are you familiar with that article?

A. Yes, sir.

Q. What is it titled?

A. Owner-operators.

Q. From the time that you have participated in area-wide negotiations has the problem of owner-operators been a matter of continual discussion and negotiation?

A. Yes, sir.

Q. To your knowledge has there always been some provision relating to owner-operators in the area agreements since their inception?

A. Yes, sir.

(Exhibits 22 through 30, inclusive, being Over-the-Road Motor Freight Agreements, were marked for identification.)

Q. Mr. Blunden, I show you a series of documents which have been marked for the purposes of identification as Exhibits 22 through 30, inclusive, and ask you to first look at each document and then identify each one for us.

A. Well, the first one is the—

Q. Look at them first all the way through, first, the whole series of exhibits and then perhaps you can make some general identification of them.

You understand what I mean? I don't mean read each one, I mean look at each exhibit.

[fol. 114] Perhaps I can shorten this up. Mr. Blunden, have you seen that series of exhibits before?

A. Yes, sir.

Q. Where did they come from originally?

A. Come from my files.

Q. What do they represent?

A. They represent the continuance of over-the—Central States Over-the-Road Motor Freight Agreement up until the present time.

Q. Starting with what time?

A. First one I think is '38, '36 or '38. Yes, '38.

Q. You produced those documents at my request at another proceeding in this county?

A. That's right.

Q. And the original exhibit numbers have been stricken

from them and we have put new exhibit numbers on them today?

A. Yes.

Q. These are the agreements representing the Central States Over-the-Road Motor Freight since the evolution of time?

A. Yes, sir.

Q. With reference to Exhibit 22 which is the 1938 agreement, will you tell us whether or not that agreement contains any reference to the owner-operator problem, and if so identify the article.

Mr. Denlinger: Object. It will speak for itself. I assume these contracts will be offered.

The Court: That is true but he may answer.

A. Yes. Article 22 deals with the owner-operators.

Q. I call your attention to the fact that Article 22 contains certain figures with respect to equipment rental rates?

[fol. 115] A. Yes, sir.

Q. Will you state how those figures were arrived at.

Mr. Denlinger: Object to that.

The Court: You may answer.

A. Well, at that time they were supposed to represent the cost of operating a tractor and trailer, six and a half cents per mile. I believe at that time that in figuring out the ratio it came from very few companies at that time, but in Chicago they did sit down and arrive at six and a half cents per mile for cost of operating a tractor and trailer.

Q. At whose request was such figure arrived at and placed into the contract?

A. Well, it was at the operators' request. It wasn't the operators' request that the six and a half cent figure of the cost be arrived at, but it was the operators' figures that were taken into consideration.

Q. At whose request did the operators submit the figures?

A. The union's request.

Q. As a matter of negotiation?

A. Yes.

Q. Was there some evil at that time, Mr. Blunden, that

the parties were seeking to correct in the motor transportation field?

Mr. Denlinger: Object to that.

The Court: You may answer.

A. Yes. The union was claiming that part of the men's wages for driving was being used for the upkeep of their vehicles, and, therefore, they claimed that the leased people [fol. 116] were breaking down the rate structure and there was quite a hullabaloo at that time between the operators of company owned equipment and leased equipment, and they were—one side was definitely against the other because they figured the man with the leased equipment had the advantage.

Q. Because of the reduced wage rate?

A. That's right.

Q. Now, starting with that original contract, Mr. Blunden, and the series of contracts which have been marked as exhibits here indicate that changes have been made in the contract provisions relating to owner-operators from time to time, is that right?

A. That is correct.

Q. Can you tell us the history of those changes by referring to the current agreement and telling us when certain provisions of Article 32 first appeared in such agreement?

A. Yes. I have marked on a copy of the present day agreement.

Q. You want to refer to that?

A. When the different changes came into the contract.

Q. You are referring to—

A. I am referring to the present day Over-the-Road Motor Freight Agreement with Ohio Rider for the period covering February 1, 1955, to January 31, 1961.

Q. You are referring to Article 32 of that agreement?

A. Yes, sir.

Q. With respect to Section 1 can you tell us when that first appeared in the relationship between the parties? [fol. 117] A. Well, Section 1, the forepart of Section 1 was in the original clause 22 in 1938.

The second part of the article was written in 1941, and

placed in this contract in 1941. Not section 2, but I am talking about the note as paragraph one.

Q. Can you state the circumstances under which the note to Section 1 was incorporated in Section 1?

A. Yes, we were on the verge of a strike and we couldn't get together in negotiations on this leased equipment clause and it was finally decided between the unions and operators committee that they would submit it to the Attorney General for a decision.

Q. What Attorney General?

A. I think it was Clark at that time.

Q. Was it Federal or State Attorney General?

A. Federal, in Washington. So it was submitted to him and he came out with a decision.

Mr. Denlinger: Object to this, your Honor.

The Court: You may answer.

A. And his decision was that he considered it——

Mr. Denlinger: If your Honor please, if there was a decision——

The Court: Well, whatever his opinion was.

A. It was an opinion, not a decision.

The Court: You may answer.

A. That the equipment was this man's tools of the trade, and, therefore, that the unions had a right to see that his driving wages were protected.

[fol. 118] Q. That was the background for the note?

A. That was the background of the note to designate what was an owner-operator.

Q. That meant only the equipment he himself brought to the job?

A. Yes.

Q. All right. Now with respect to Section 2.

A. Section 2 was put into this contract in 1939 and Section 3 was the same time.

Q. With respect to those sections, if you can, if you will give us the nature of the dispute which led to the inclusion of the section so that the Court may know what specific

evil or problem, if any, the parties in good faith were attempting to adjust in negotiation of this article?

A. Well, the union claimed in the section where certificate and title to the equipment must be in the name of the actual owner, they claimed there was a lot of people that was transferring their title into other people's name to avoid the conditions of the contract, so certificate and title must be in the name of the actual owner was written in 1939.

Q. Section 4?

A. Part of it was in 1939, 1952, and 1955.

Q. What was added in 1955, Mr. Blunden?

A. Well, part of it was this, "The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished."

Q. Was that a result of considerable legal discussion [fol. 119] with respect to the validity of this kind of a clause?

A. Yes, sir.

Q. All of these clauses apply to the driver who owns the equipment which he drives, is that correct?

A. That is correct.

Q. All right. Now continue on with Section 5.

A. Section 5 has been carried on since 1939, in its deals of a bona fide lease for thirty days.

Q. Section 6.

A. Section 6 was also in 1939 where we agreed to issue a separate check for driver wages and vehicle.

Q. What was the basis of that?

A. The figures were put into the contract on a basis of cost, and the union insisted the only way they had of knowing whether a—

Q. In your own operation, do you issue separate checks to the driver?

A. In the majority of instances we do. Where the owner-operator requests it we don't.

Q. Will you continue on Section 7, I believe.

A. That came into being in 1949, and it was about the same as 1949 Paragraph 6, Section 6. Section 7 was written in 1949, and again the unions were claiming that cer-

tain operators were chiseling on the owner-operators by extra charge-backs.

Q. I see that this refers to mileage, tonnage, or percentage?

A. Yes.

Q. Does that mean there are three methods of payment?

A. Yes.

Q. Section 5 indicates only a mileage payment?

[fol. 120] A. That is correct.

Q. How do you reconcile the two?

A. Well, mileage basis was more prevalent then than it is right at the present time. And they wrote this in here because we insisted that the tonnage method of payment be recognized and also the percentage method.

Q. The employers?

A. Yes. And we set up a standard of how we would be able to tell whether it met the minimums of the contract.

Q. How do you do that? What is the mechanics of that?

A. Well, by agreement it was set up that they would take a thirty-day earnings.

Q. Of a particular owner-driver?

A. Of the particular owner-driver.

Q. What would they do?

A. They would manifest his operation and all and go down through and see if the two met the minimum wage contract.

Q. Will you give us an example of a man who is on the percentage method of payment?

A. Well, most carriers, and I would say all carriers have manifest and records they have to keep for I.C.C., so every man carries a trip manifest, and the mileage he run against the rate of pay would amount to so much and then his driving wages would be figured.

On the percentage basis, if that didn't meet the cost in the contract you had to pay him.

Q. If a man on percentage manifest—grossed \$1500 you would check the manifest to see what he would be on [fol. 121] percentage payment?

A. Yes.

Q. And then he—

A. At the particular time we had this it was very simple

because you didn't have the pension, welfare, and a lot of conditions.

Q. But that generally would be the formula?

A. That is correct.

Q. All right. Move on to Section 8, Mr. Blunden.

A. This was the original paragraph in the 1938 contract, and I don't believe there has been any change in it to this day. The purpose of it was to give the owner-operator the privilege of buying his gas and oil any place rather than from the company.

Q. Was there a specific abuse?

A. The union claimed.

Q. Claimed abuse?

A. Yes.

Q. What was the union claimed abuse there?

Mr. Denlinger: Object.

The Court: You may answer.

A. The union claimed some companies were making the operator buy his gas and oil and tires from the company itself and they were charging either a larger price than he could get it other places or taking one or two percent for giving him the money.

Q. Sort of a company store arrangement?

A. That was the union's contention.

Q. The employers never admitted it, I assume?

A. No, I don't think they did.

Q. Section 9.

A. That was in 1939. We tried to get the thing out [fol. 122] ever since because it don't make sense. There shall be no deduction. And we have been deducting.

Q. Mr. Blunden, we won't re-negotiate it now, but it has been there since 1939 as a result of a claimed abuse by the union?

A. That's right.

Q. Section 10.

A. That has been in since 1938, but I think there has been wording added to it from time to time. Time lost at state lines, I think we added that.

Q. I suppose it is a fact that some changes have been

made from time to time by the addition or deletion of language, is that right?

A. Yes.

Q. In negotiations.

A. The matter of tolls, that was negotiated and all taxes and additional charges, that was negotiated in 1955 by the addition of the weight taxes in the various states.

Q. As a matter of fact, was there some situation in the State of Ohio that led to the addition of the last paragraph?

A. Yes, the State of Ohio and State of New York both had approximately the same tax deal.

Q. You refer to both states. Do your employees who are domiciled in Ohio get paid under this regardless of where they go?

A. That is correct.

Q. So if there is some tax in New York this contract would govern the absorption of the cost?

A. That is correct.

Q. There again, what was the background of Section 10, Mr. Blunden?

A. Well, Section 10 will have axle tax law which said that the original or the owner of the vehicle in whoseever [fol. 123] name the title was in was going to pay the tax. That is the way the law read. And the unions objected to the tax being passed onto the actual owner of the equipment and we were notified we would have a strike if this was going to be passed back to the owner-operator.

Q. The first part of Section 10 which had its origin in 1938, but which has been amplified from time to time since, you say that was for the purpose of protecting the driver's wage scale?

A. That is correct.

Q. Section 11.

A. That came into the contract in 1939, and there has been some additions made to that.

Q. That speaks for itself.

A. In the wording, and I can't just cover where it is, but materially it is about the same as it was in 1939.

Q. There was a specific abuse there?

A. That is all of the same article coming into the rate of pay which materially increased from time to time.

Q. Now, with respect to Section 12. That is an elaboration, I believe you said, of the old Article 22.

A. That is correct. If I read it I could probably tell you the changes made in there. No, I can't. I think that there hasn't been very many changes until you come down to equipment rental and dead-heading.

Q. And rates have been changed from time to time?

A. Yes.

Q. At whose insistence was a dead-heading provision put in?

A. Union.

[fol. 124] Q. What was the claimed abuse there?

A. Well, they claimed the man was running too many dead-head miles. He wasn't getting paid for the cost of running his equipment.

Q. Why was that equipment cost put in at seventy-five percent?

A. It was taken into consideration at that time. I can't say that is the only reason, but the steel haul was taken into consideration because they have such a tremendous, sometimes light movement one way.

Q. Is there a lesser cost involved in the haul of an empty trailer or in dead-heading?

A. Oh, yes.

Q. The weight may have some effect upon the cost of the operation?

A. Yes.

Q. Weight of the cargo?

A. Yes.

Q. You say those minimum rates have been changed from time to time. How do those changes result?

A. Well, recent years we furnished the union with cost figures from various types of operation and various size equipment. And these were cost figures of fleets, not individuals.

Q. Would the cost figures of a fleet generally be less than the cost figure of an individual?

A. Well, I would think so for the simple reason that a company, presumably so, buys things cheaper than the individual can, such as gasoline.

Q. What factors were weighed in determining the mileage cost of operation of the particular piece of equipment, Mr. Blunden?

A. Well, with the cost of a tractor amortized over so many years was the first factor, the depreciation to take into consideration, the insurance, the maintenance, the [fol. 125] amount of gasoline, the size of the tractor, and weight of what it was going to haul, and these were company figures, Mr. Previat.

Q. Oil, cost of tires?

A. Yes.

Q. All of those enter into the calculation?

A. Yes.

Q. What do these figures in the current contract represent?

A. Well, they are supposed to represent the cost of running the tractor or a trailer or the various types of equipment mentioned in the contract.

Q. Can your company operate a tractor or trailer at the cost per mile set forth on Page 41?

A. No, we can't.

Q. You believe this is actually understated?

A. In our particular instance it is.

Q. What is your average cost per mile of running?

A. Well, our average cost comes close to—over-the-road transportation for vehicle alone, let me put it, to an approximate figure between thirteen and fifteen cents a mile.

Q. Tractor and trailer?

A. No, sir.

Q. Just the tractor?

A. Yes, sir.

Q. Maximum rate for tractor here is ten cents?

A. Yes, I know.

Q. So these figures in your opinion are even below cost in some instances?

A. They are in our instance.

Q. Some operators may be able to operate at this cost?

A. I have had some of them tell me they can.

Q. Now, this article also provides for an increase in rates over certain load limits?

A. Yes. That is the part that was changed in this con-[fol. 126] tract.

Q. How was the 23,000-pound figure arrived at, at which the rates change, Mr. Blunden?

A. That had to do with a load factor in various states on single axle trailer.

Q. Is that also recognition of the greater cost of operation?

A. Yes, and also spread axle because it goes up half a cent over 23,000 pounds.

Q. I ask you if the rates here apply to any other piece of equipment other than owner-driver.

A. No, sir. It does not not apply to fleet owner.

Q. Does a fleet owner—must you pay a fleet owner these rates per mile for the use of his equipment?

A. No, sir. Has nothing to do with the fleet owner.

Q. As a matter of fact, will you state whether or not your leases contain these rates or other rates.

A. No, they don't contain these.

Q. Are they higher or lower?

A. Our lease reads as follows:—

Mr. Denlinger: Answer the question.

Q. Just tell us whether the rental rates which you are paying to your owner-drivers is higher or lower than the figure set forth in Article 32.

A. It is higher.

Q. How does that come about? Is that a result of negotiation with the union?

A. No.

Q. How do you fix a higher rate than the minimum set in the contract?

A. It works out in our particular instance on the percentage basis that the operator gets, that he gets more [fol. 127] money for his equipment than the rate specified in the agreement.

Q. Has the union ever negotiated a lease for fleet owners?

A. No, not to my knowledge.

Q. Has the union ever negotiated a lease for an owner-driver other than the provisions that are found in Article 32? You follow the question?

A. No, not to my knowledge they haven't.

Q. The union's sole concern of Article 32 is as they apply to the driver?

A. That is correct.

Q. When you say that these figures in your opinion understate the cost of operation, you are saying that if only these figures are paid the owner-driver is not getting back the cost of operation, is that right?

A. I can only speak for our own company.

Q. That is your experience?

A. Yes. I don't think with our equipment the owner-operator would get back his cost at these figures.

Q. Will you go on then with the article itself, Mr. Blunden.

A. Well, as I say, change in that paragraph Section 12-A and 12-B and the change was "There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver."

Q. Was there anything else added?

A. In the same section B in 1955 this was added: "The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver."

Q. So far as you know, Mr. Blunden, was that an accurate statement of the negotiations on this article?

A. Yes. The question of legality came up in the negotiation.

Section 13 of the article was put in in 1941 and failure to agree on any problems that concerned the owner-operators—last section of it was new—failure to agree shall be submitted to the grievance board or grievance procedure. That was a new procedure.

Q. Was the background of that article some point of difference between the employers and union with respect to the use of this equipment?

A. Yes. Not so much the use of the equipment, but any problems that would arise the owner-operator would be treated the same as any operator or any of your employees.

Q. How about section 14?

A. Section 14 was put in there in 1932 and we amended the article in 1952.

Q. I think you misspoke yourself, you said 1932.

A. 1938. The new part of that paragraph is: "Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both."

Section 15 has stood since 1941. I don't think there has [fol. 129] been any change in the thing.

Q. Was that part of that dispute that you referred to in 1941 that led to the addition of the note?

A. Yes. Not only that dissolution of his equipment, that he wouldn't be forced to sell to the company at their price. Modification or question of dissolution shall be submitted to arbitration.

Q. How about Section 16?

A. No, that stood about the same way it did in 1941, I can't recall any change in that paragraph at all.

Q. Is that also the result of that historic dispute that was referred to the Attorney General?

A. Yes, that is the same thing.

Q. How about Section 17?

A. Well, this comes down to whether the owner-operator selling his equipment to the employer and setting up a real valuation for his equipment.

Q. Section 18.

A. That came in in 1941.

Q. Also as a result of that basic dispute?

A. Yes. Protection for the owner-operator of any vehicle.

Q. And Section 19.

A. 1946. This was put in there in 1946. The unions were going to refuse the addition of any individual owners, and the unions also desired to make certain restrictions on the use of owner-operators, again claiming that the operators, the company operators were taking advantage of certain provisions of the contract.

Q. Nineteen represented the compromise between the union position that it should abolish all owner-operators

and the companies' contention there should be no limitation?

[fol. 130] A. That is correct.

Q. Calling your attention to sub-section B of 19, when did that come in?

A. That came in in 1952, and that was the result of some threats on the union's part to further curtail the owner-operators.

Q. Alleged abuses?

A. This provision was new. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty percent or more of time. That came in 1952 as a result of negotiations.

Q. Has that had in your experience any practical effect?

A. Not too much so because the union has never insisted that an owner-operator or fleet owner owning more than three pieces of equipment who has been old in seniority in their union—as far as I know there has never been any trouble on that paragraph.

Q. In other words, where a fellow works sixty percent of the time he holds seniority?

A. Yes, and I don't think they have held it up to the sixty percent either.

Q. Mr. Blunden, you say that you participate in the administration of this contract and handling of grievances under the contract. Will you state whether or not the owner-operators are treated any different than any other employee?

A. As far as grievance procedure, no.

[fol. 131] Q. There is no such thing as a uniform lease for the equipment owned and driven by the owner in this area?

A. Well, we have what we call uniform lease adopted by the association in Michigan, Michigan Employers Association.

Q. Is there any such thing as uniform lease that the union negotiates or insists on?

A. No.

Q. You know from your experience there is a variety of leases in operations covered by Over-the-Road Agreement?

A. Yes, sir.

Q. Mr. Blunden, in your capacity as vice president of Kramer Brothers Freight Company and your capacity of being active in the field generally of motor carriers, are you familiar with the proceeding before the Interstate Commerce Commission which is commonly called M.C. 43?

A. Yes, sir.

Q. Without going into details, will you state whether in your experience the provisions of that regulation have had any effect upon the growth or the decrease in the use of owner-driven equipment.

Mr. Denlinger: Object, your Honor.

The Court: I will permit an opinion to be expressed on it.

A. Well, as far as our own company is concerned it has this effect, that we can no longer pay those drivers the minimum when the law becomes effective and I think the effective date is July 1. We will have to change our method of payment to keep our owner-operators. And the other effect that the act creates is the leasing of equipment from [fol. 132] individuals on a one-trip basis.

Q. It has eliminated that?

A. Yes.

Q. The question was whether from your experience and the promulgation it would cause an increase or decrease.

A. It would cause a decrease.

Q. In the industry itself has it caused the same effect?

A. I couldn't say that. I couldn't say what effect M. C. 43 would have on other companies. From my own experience of other companies some have decreased and some have increased.

Mr. Previant: You may cross examine.

Mr. Denlinger: You want to recess?

The Court: Yes, we will recess. I think Mr. Milburn wants a recess.

RECESS

Cross examination.

By Mr. Denlinger:

Q. Mr. Blunden, I gather from your testimony that for many years you have been engaged in the motor truck business.

A. Yes, sir.

Q. And you stated that you were familiar with I.C.C. Regulation M. C. 43.

A. Yes, sir.

Q. That regulation does not become effective until July 1st, is that right?

A. That is the postponed date as I understand it up to now.

Q. It has been postponed from time to time for a number of years?

A. Three times, I think it has, sir.

[fol. 133] Q. Have you attended any of the hearings in Washington with reference to this regulation?

A. Our company has been represented, but not me, Mr. Denlinger.

Q. Have you talked with members of the teamsters union attributed to the statements that owner-operators must go as to their arguments and representation to the Interstate Commerce Commission?

A. The first part of your question, let me ask you, have I talked to the teamsters directly about anything with reference to M. C. 43?

Q. Yes.

A. No, sir; I haven't.

Q. Have you received copies of briefs on statements by Mr. Wheeler, counsel for the teamsters union in which he makes the statement owner-operators must go to the I.C.C.?

A. I have read those statements.

Q. Now, do you have more owner-operators now than in previous years?

A. No, sir; we have less.

Q. I think you stated that approximately fifty-five owns and drives his own equipment. Is that with reference to your entire operation or does that represent those who own and drive in Ohio?

A. No, sir; that represents the over-the-road equipment. We do have more owner-operators than that, but they don't come underneath the act, don't come under M. C. 43 or under the union contract.

Q. They don't operate under what we have in discussion here, the 1955 Over-the-road Contract?

A. No, the rest of them are local employees.

Q. Can you give us the number of owner-operators or [fol. 134] drivers affected by this contract employed by you in Ohio?

A. I couldn't give it to you exactly, Mr. Denlinger, but I imagine or I could give you a rough estimate.

Q. The best you can.

A. I think we have about thirty-five operating. No, I wouldn't say that much. Probably about twenty-five operating out of our two terminals in Ohio.

Q. That is Toledo and Cleveland?

A. Yes.

Q. Do you know how many owner-operators operate in Ohio from your knowledge of the negotiations which are carried on to bring about the contract?

A. No, sir. There is a great deal of them, I know that.

Q. Now, going back to Section 19—

The Court: You want Exhibit 1?

Mr. Denlinger: Yes, or if he will use his copy which is identical to Exhibit 1, as to notes he has previously made regarding the contract.

Q. And directing your attention to Section 19, do I understand your testimony correctly that that section was written as a result of a claim by the union that it desired to abolish all owner-operators, and that the carriers desired that no restrictions be placed upon the owner-operator's leases?

A. That was just about it.

Q. Now, furthermore, with reference to Section 12, I made a note that that was written because there was a question of legality arising and that section was a result of the discussion of the question. What was the legal question that was involved?

A. Well, the legal question that was involved in that particular argument was whether the union had the right [fol. 135] to set a profit for leased equipment.

Q. Was the union attempting to set a profit for leased equipment?

A. Well, Mr. Denlinger, you are in the argument, the same that would arise between two companies, what it cost to operate a piece of equipment. I might have one idea in my company what it might cost to operate a piece of equipment different than another one. What we were trying to make sure of was that the union wasn't negotiating a profit for a piece of equipment.

Q. That was predicated upon the evidence that you had before you, that the operators and the union both presented that the various leases for owner-operator equipment differed materially as to financial and monetary returns?

A. That is correct.

Q. And those differences were largely accounted for by the ingenuity or carefulness of the operation of the business by the owner himself, that was one of the factors, was it not?

A. How he would conduct his business and what he would charge back to the lease of the equipment or to the owner-operator would have an awful lot to do with it.

Q. Yes. And how the owner-operator would buy the necessary things in connection with both equipment and his tires and oil and stuff, that would depend?

A. That would have a big bearing on it.

Q. His carefulness as a driver of his own equipment would have a great bearing on it, also?

A. That is correct.

Q. Mr. Blunden, I am accepting your past experience [fol. 136] over these years to qualify you to ask you this question: What in your opinion is the fact as to whether

or not operations can be had in this business through owner-operators owning their equipment and driving cheaper than the company may own and employ drivers?

A. Let me see if I understand you.

Q. Let me put it this way, I don't want any misunderstanding. I was prefacing it, you might know. I wish you to give the best and most truthful answer you can.

May a common carrier or certificated carrier or a contract carrier operate with their own equipment under this union contract as cheaply as it can operate with the equipment owned by individuals and operated by individuals?

A. I would like to give you a yes and no answer on that.

Q. If you can tell me what your opinion is in general words, I think the Court will appreciate it.

A. Up until a few years ago we thought that the owner-operator method of procedure in our company was the best method of operation. We were very successful using it. The one reason that we did that was we didn't need quite so much supervision over the maintenance of the equipment, over the dispatch of the equipment.

Now, in the past two years we have more or less changed our mind because there are various things that offset it, Mr. Denlinger, that is, the flexibility of the equipment, the ability to get more miles out of the equipment than we could out of the owner-operator. And frankly, on April 26, [fol. 137] we are going into the different method for that reason only.

Q. April 26 of this year you are going to cancel all owner-operator leases?

A. No. We are approaching it from a different angle to increase those people's mileage because at the present time your equipment—speaking for ourself, not for other companies—we need more flexibility in the loading and unloading of those trailers; we need shorter runs for the drivers. Our present method of operation is outdated. We haven't kept pace with some of our competitors.

Q. But up to two years ago you would say to this Court that the experience of your company was that you could operate cheaper with operator owned equipment than with company owned equipment?

A. I would say that would be a fact.

Q. All right. Now, could you give me any idea how many, if any, owner-operators have had a case before the grievance committee arising out of any of these contracts?

A. The number of them, Mr. Denlinger?

Q. Yes.

A. No. There have been very, very few.

Q. Very, very few. Now, I assume that over the years—
Withdraw that, please.

Let me ask you, Mr. Blunden, during the many years of negotiating with the Teamsters Union for this type of agreement which is Exhibit 1 here, you have been the Chairman of the Michigan Association, or the people that negotiate for that State with the chairman and committee of union, is that right?

A. That is correct.

Q. And Mr. James Hoffa was the chairman of the union [fol. 138] committee during those years?

A. No, not necessarily, Mr. Denlinger. See, he came in there quite a bit later. We started negotiating on this contract before Jimmy Hoffa entered into the picture.

Q. Can you tell me when you first in negotiations found Jimmy Hoffa negotiating for the union?

A. I think it was in the early part of the war years, Mr. Denlinger, in the 40's.

Q. In the 40's. All right. Now, are you familiar during these years with the constitution of the teamsters particularly in connection with owner-operators?

A. I have had the pleasure of reading the union's constitution a couple of times.

Q. In other words, in dealing with this subject you figured that that might be something to know about, correct?

A. That's right.

(Exhibit 31, being the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, was marked for identification.)

Q. I will hand you what has been marked for identification as Exhibit 31 and ask you to examine it and see if you can tell the court what that book is.

A. Well, it is the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers.

Q. The effective date?

A. August 11, to August 15, inclusive, 1947.

Q. All right. Now, we have the other constitution here [fol. 139] showing that this constitution known as Exhibit 31 was amended in some particulars in 1952. Now, I would like to draw your attention, Mr. Blunden, in Exhibit 31 which is effective until October '52, the provision "G" on Page 6.

Mr. Previant: If the court please—

Q. And ask you if you recognize that provision in the constitution which prevented any owner-operator from voting upon any wage scale established by the union.

Mr. Previant: If the Court please, we will object to any reference to the constitution which by its terms has not been in existence since 1952, which is irrelevant and immaterial.

Mr. Denlinger: If your Honor please, prior to 1952 has been brought into all of these contracts, and I wish to show that during that period of time for all those agreements that the constitution of the teamsters prevented these very people for whom contracts were being made from voting upon or ratifying or having anything to do with it. That is our purpose.

The Court: You may answer.

Mr. Denlinger: He says you may answer.

A. May I have the question?

(Question read.)

Mr. Previant: The constitution speaks for itself.

The Court: Yes, that is true.

Mr. Denlinger: I think the question is rather complicated.

Q. Let me ask, Mr. Blunden, if Section G on Page 6 [fol. 140] of Exhibit 31, was given consideration by you and other negotiators with the union during the period of

negotiations for the other contracts with the Teamsters Union.

A. I don't think this paragraph was taken into consideration.

Q. Now, Mr. Blunden, I did not note the Attorney General or public official that you mentioned as giving an opinion on the equipment that is used in the motor industry by owner-drivers.

A. To the best of my knowledge, Mr. Denlinger, that was Attorney General Tom Clark.

Q. Attorney General Thomas Clark?

A. Yes.

Q. Have you an idea of what year?

A. That would either be around '39—just a minute I think I can give it to you. Pretty sure it would be in 1941 or '40.

Q. 1940 or '41. Do you know at whose request that opinion was rendered?

A. Well, as I said before, we were in an argument with the union on a representation of any leased equipment.

Q. Where was this argument taking place at the time?

A. In Chicago.

Q. In Chicago. Then what happened following that argument?

A. Then the operators agreed with the union that rather than go to Court they would go down to the Attorney General by mutual agreement, and they would agree to abide by his decision. And they both laid their arguments before the Attorney General, and he gave the opinion that the truck or tractor—

Q. Was the tool of the trade.

[fol. 141] A. Was the tools of the trade, and the reason you employed him was that he had a tractor and trailer for your use.

Q. Was that a written opinion?

A. Mr. Denlinger, I can't tell you that now. I imagine it was.

Q. Did you ever see it in writing?

A. No, I never did.

Q. Who told you that that was the Attorney General's opinion?

A. We apparently all accepted it. And I was not the head of the association at that time.

Q. You were not a member of the committee that went to Washington to see the Attorney General?

A. No, I wasn't, see, because the Central States Employer Area Association was comprised of twelve states and the state associations hadn't come into being at the particular time.

Q. At that time in 1940 or '41, the State of Ohio and the carriers in Ohio were not part of the Central States Area Agreement, were they?

A. Oh, yes; there were carriers that was part of the Central States Agreement.

Q. You remember what carriers?

A. Because that was before the split up of the states. That was before the big argument come along at that particular time.

Q. Now, you will recall, wasn't it '49 that the owner-operator—Pardon me, I may have confused you and I didn't mean to.

What I am getting at is prior to 1949, I think it was, the carriers of Ohio were not governed by any over-the-road area agreement as to owner-operators, isn't that correct [fol. 142] rect? I am differentiating now between a labor contract for carriers generally over-the-road, and the particular provisions regarding owner-operators.

A. You ask me who represented the owner-operators or represented the State of Ohio in those negotiations back in there. In those years one of them was the chairman—all state associations at that time were pretty loosely knit groups, but the man who represented Ohio at that time was Obie Obrian and he was at those negotiations.

Q. Do you recall a few years back there was an identical proceeding filed as we have here now in this county and the owner-operators' provision, by virtue of an agreement at that time between the union and carriers, the carriers were exempted in Ohio from the provisions regarding owner-operators?

A. See, Mr. Denlinger, that wouldn't have happened in negotiations because here is the way it happened. The other eleven states that were negotiating as a group would

always ask the unions if Ohio was representative in this. In everything, "Oh, yes." Now, we negotiate, right or wrong, for the State of Ohio in those negotiations.

The same thing happened in the State of Kentucky. The union said Kentucky is in and the State of Kentucky said no.

Q. Union said they are in and carriers say they aren't?

A. Yes, but they came in.

Q. I want to ask you about Ohio, if you recall in recent years, and try to give me the year, when owner-operator clauses in the Central States was not effective against Ohio carriers.

A. May I have the exhibits, maybe I can answer that, [fol. 143] Mr. Denlinger.

In the year of— In the contract covering 1939 to November 15, 1941, the Ohio unions were represented and there was a group of Ohio carriers who came into the negotiations and afterwards walked out of the negotiations.

Q. Mr. Blunden—

A. That would be the first year.

Q. Now, isn't it a fact that in 1949, in the 1949 contract, what would have been '47 to '49, at that time there was an injunction action brought here in this county and as a result of that the carriers and the union agreed that the provisions of the contract relative to owner-operators should not apply to Ohio and from that time on is the only period in which there has been effective action on the owner-operator clause within Ohio, is that correct?

A. I couldn't tell you, Mr. Denlinger, because, see, we in Michigan operated all the way through Ohio during their troublesome days down here because we took the position that underneath the laws governing all labor management meetings that the union had sent out calls to meet at a certain place and negotiate. We, and the rest of the states were very, very careful that we attempted to protect ourselves against any state not taking part.

Q. That wouldn't comply with what you were agreeing to?

A. Yes.

Q. What I am trying to get at, did you not learn that in Ohio until very recent years there was no effective agree-

ment between carriers and the union with reference to owner-operators?

A. Well, now, if you put effective, I don't know. Would [fol. 144] the union be able to enforce the owner-operator clause? I would agree with you they couldn't. They didn't.

Q. Did not in the first instance the union and the carriers agree that there should be no application of the owner-operator clause in Ohio?

A. Not to my knowledge, Mr. Denlinger.

Q. You don't know of any occasion like that?

A. No.

Q. Wasn't that ever brought to your attention?

A. No, because we here in Ohio who had terminals in Ohio which were quite numerous, we operated on this contract all the way through.

Q. Have you ever had a grievance as your part of the top grievance procedure with reference to owner-operators in Ohio?

A. Yes.

Q. When was that grievance?

A. Oh, that was not too very long ago. The particular case, I think, was on a steel hauler out of Toledo. I will think of his name in a minute.

Q. A steel hauler who was overweight or something?

A. No, it had reference to do with the provisions of this contract.

Q. In what respect?

A. In the manner of payment and in the manner of the owner-operator getting his full scale as according to this contract. I think this particular operator was on this—was on the book, let me call it on the book for quite a little while. His name will come up to me in a little bit.

Q. That is the only instance you can remember in re- [fol. 145] cent years?

A. I believe it is.

Q. Now, Mr. Blunden, would you look at the last contract, that is the green one, and tell me who from Ohio was on any of these negotiating committees.

A. Well now, the Ohio Rider, Mr. Denlinger, was not negotiated in Central States. It was negotiated a long time after the body of the contract was signed and agreed

to. The Ohio Rider was negotiated here in Ohio. The people who negotiated the contract for Ohio and signed for Ohio for the Labor Relations Department of O.T.A. were Bob Todd and J. Robert Wilson and Herman Rabe and Charles Schleret; and the steel truckers, the negotiations were pretty well taken care of by George Maxwell who is secretary of the association because I sat with him.

Q. All of these people who are on these negotiating committees did not attend the negotiations, but you reduced it down to a few people, isn't that correct?

A. Yes, as far as the negotiation. But every matter of policy was pretty well screened by a thirty-five or forty man committee. The negotiating committee didn't have the powers it generally had. See, I was the general chairman so I am pretty well acquainted—

Q. You were the general chairman and did most of the negotiating with Mr. Hoffa?

A. No.

Q. Did you have help?

A. Oh, yes; because we have learned to get experts like the union does and have such committees. Not even the general chairman has any authority to pass on anything. It all goes back to the sub-committees and steel haulers and common carriers and they sit around a table, and be- [fol. 146] lieve me, they sit.

Q. Section 19, restriction on equipment, Section 19, when did you say that went into effect originally?

A. Section 19?

Q. Yes.

A. Part of that paragraph was in there since 1946, see.

Q. 1946 it originated, you say?

A. Yes.

Q. And what parts have been amended since '46?

A. Mr. Denlinger, I know that the "B" paragraph, see, of the same article of Section 19 B was a brand new paragraph in 1952.

Q. That was a brand new paragraph in 1952?

A. That's right.

Q. So that in 1952 the union's policy to abolish all owner-operators was being urged by them and the result of the negotiations was the preparation of Section 19, that correct?

A. Well, I can't agree with you that the union was sincere in abolishing all owner-operators.

Q. Was that their argument?

A. Well, the argument for the union was that there were certain abuses by the companies.

Q. And to omit or get rid of those abuses you should abolish the owner-operators?

A. Well, in negotiations, there are certain things said that comes out, but—

Q. Was that said?

A. The union was trying to control the operators uses of owner equipment.

Q. In their efforts to control, did they make the statement that they had to go?

A. No, I can't say that they did.

[fol. 147] Q. Or words to that effect?

A. No.

Q. What did you mean when you said that the union contended they had to abolish the owner-operators?

A. If they could not protect the man's driving wages such as the procedure of grievances and all those items, sec.

Q. Let me ask you a question.

A. I don't honestly think the union ever thought they could ever abolish all owner-operators.

Q. I am asking you if that was their desire and intention?

A. No.

Q. You don't want to retract your statement that Section 19 came about because the union said that all owner-operators would have to be abolished?

A. Unless there could be a control.

Q. So all these negotiations were based upon the union's claim to put a restriction on owner-operators and use of their equipment, is that correct?

A. No, that is not right.

Q. What do you mean by controlling the owner-operator?

A. You see, what the union was trying to do—

Q. Will you answer my question, what do you mean by control of the owner-operator?

A. That is, he would secure a living wage plus an adequate rental for his equipment.

Q. In other words, the union insisted on representing him in connection with his equipment?

A. Right.

Q. And fix a rate that he would have to charge for the use of his equipment?

A. A rate that was supposed to protect him from using [fol. 148] any of his driving wage for his equipment.

Q. But the result of it was a restriction upon the owner-operators as to the minimum that he dare charge for the use of his equipment?

A. That is correct.

Mr. Denlinger: That is all.

The Court: Any other attorneys desire to examine?

All right, you may step down, then, Mr. Blunden.

(Witness excused.)

Mr. Knee: If your Honor please, may we have a five-minute recess to go over one or two things here?

The Court: Sure. We will have a recess.

RECESS

Mr. Previant: The Defendant rests, your Honor.

The Court: You offered all your exhibits?

OFFERS IN EVIDENCE

Mr. Previant: Excuse me. At this time we do offer the exhibits. I think there was one exhibit.

Mr. Denlinger: We have no objection to the admission of all the exhibits you have identified.

In that connection we would like to ask the Court to receive Exhibit 31 which is the constitution up to 1952.

Mr. Previant: That is the one to which we objected on the ground of materiality and relevancy.

The Court: The exhibit does represent the by-laws, I take it.

[fol. 149] **Mr. Previant:** We are not challenging the competency.

The Court: All exhibits that have been identified are admitted.

(Exhibits 22 through 31, inclusive, received in evidence.)

The Court: Any rebuttal?

Mr. Denlinger: If your Honor please, we will offer no rebuttal, but I had requested your Honor to present a letter that was addressed to this Plaintiff and to all other owner-operators by the A.C.E. Transportation Company. I would like to have that letter identified as an exhibit on the question of cancellation of his lease by the company.

I think that request was made, your Honor, previously and you said it could be permitted.

If the Court sees no efficacy in it I will not press it, and let it stand as it is.

The Court: I don't know. I would like to permit anything any of you lawyers feel may be relevant. After I have had occasion to digest this matter I think the relevancy will occur to me. I don't see where it will hurt anybody to admit any of these things even though they may be irrelevant. It hasn't been identified?

Mr. Denlinger: No, it hasn't.

(Exhibit 32, being a letter dated January 24, 1955, was marked for identification.)

Mr. Rabe: What is it?

Mr. Denlinger: It is a letter dated January 24, which [fol. 150] is four days after the injunction was granted, but I had made the statement to the Court that such a letter was in existence and that was the purpose of my bringing it up at this time.

The Court: The objection, does it go to the matter of authenticity?

Mr. Previant: Goes to the matter of relevancy and materiality and lack of opportunity to cross examine.

The Court: All right. I will give you an opportunity to examine anybody you want to examine on it.

How do you want to examine it?

Mr. Previant: The writer of the letter.

The Court: Who represents—

Mr. Denlinger: Mr. Iden represents the company, your Honor.

The Court: Is Hartline available?

Mr. Iden: He is in town. I prepared the letter. I didn't type the letter. I prepared the form and know about the

company's position as of the time of that letter. At that time we were negotiating with the local union about making some change-overs and that had to do with the delay of the letter and we were preparing a new contract.

Mr. Previant: Our objection will be limited to the materiality and relevancy of these proceedings, your Honor.

The Court: Admitted.

(Exhibit 32 received in evidence.)

The Court: Anything else?

Mr. Denlinger: We have nothing further to offer.

[fol. 151] Mr. Petri: Representing at this time only F. J. Egner and Son, I have since ascertained that F. J. Egner are not signatories, but have an agreement covering higher tank carriers, teamsters, warehousemen and since the contract is not the contract here, I would like the indulgence of counsel for the Plaintiff in a motion to dismiss F. J. Egner and Son in this action.

Mr. Denlinger: That motion made orally will be accepted by the Plaintiff and we have no objection.

The Court: You want to prepare the journal entry?

Mr. Petri: Yes.

The Court: Anyone else have anything to say?

Now, I would like to have the benefit of briefs on this matter. You represent Plaintiff, maybe you should lead off, Mr. Denlinger, you know what the questions are.

Mr. Denlinger: If your Honor please, at this time of course, we say to your Honor we would like to waive any argument and present this in the best form that we can in writing to this Court.

The Court: Anyone want to make oral argument?

Mr. Denlinger: And I would like to be given such time as the Court and counsel—looks like it is going to end up here, but Bob and Dave and I having the burden of a job here as carriers, have not been too rough on either side and any reasonable time—I want to say to your Honor this subject has been rather thoroughly diagnosed from a legal standpoint by all of us in the past couple of years and we [fol. 152] can bring this up to date for what we feel are the authorities governing the situation in a short time depending wholly on your Honor's wishes.

The Court: Are you lawyers wholly in harmony that the next step will be filing of briefs?

Mr. Knee: May I speak for a moment, your Honor?

MOTION BY DEFENDANT UNIONS TO DISMISS
AND OVERRULING THEREOF

I don't think—I know we as counsel for the Defendant unions do not want to be heard orally. We would prefer to present this matter to the Court by brief.

In accordance with our law I should like at this time to renew our motion for the record to dismiss the cause on the basis that the Court has no jurisdiction of the subject matter of the suit and the issues joined herein.

I make that motion here and renew it.

The Court: Very well.

Mr. Knee: May I point out, if the Court please, may I point out in the brief which we will prepare will be briefs to the merits. We have already submitted to the Court our memorandum on the jurisdictional issue so we won't repeat that. I have given counsel a copy of that so if the Court will please take that memorandum as our argument in connection with the jurisdictional question.

The Court: The record may show the motion is overruled, the Court expressly reserving the right to reconsider that motion. And in your briefs, Mr. Denlinger, I wish you would go to the merits too as well as this matter of jurisdiction and also the merits and then you will respond to his brief. You don't want to file anything further until you get copies of his brief?

Mr. Iden: We will file a brief.

The Court: Mr. Iden.

Mr. Rabe: I reserve the right to, your Honor.

The Court: Shall we fix a time? You want to commit yourself? I think it might help if we set a deadline on it.

Mr. Denlinger: I think it would, your Honor, and I would say a week or ten days.

The Court: All right, ten days, Mr. Denlinger.

Mr. Denlinger: Ten days from today would be—and the rest of you will have yours in in ten days after that?

Mr. Previant: We would like a copy of the record before we prepare our briefs:

The Court: I am not going to do any work on this case until I have the record with the exception of the jurisdictional question. We will have the record.

Mr. Denlinger: I would be glad to share with the Defendants.

The Court: I tell you what to do. If you want a copy of the record make your arrangements with the reporter, those of you who want copies.

I know he is loaded up trying to get records out for cases that are on appeal now.

Mr. Knee: How long after counsel for both sides receive the record will the briefs be due on either side? Have to get the record first.

[fol. 154] The Court: I think Mr. Denlinger should have his in ten days after he receives a copy of the record. You want a copy of the record?

Mr. Denlinger: Yes.

Mr. Previant: We want two copies.

The Court: The two of you, you and Mr. Knee each would like a copy.

Who else wants copies? Mr. Jenkins. That is four.

Anybody else?

I am not going to hold you, you understand, strictly, if you are in trouble and busy and have other work and can't get the brief out within the ten-day period.

Mr. Knee: We personally appreciate that, believe me.

Mr. Denlinger: May I say at this time, I know both counsel on the other side of the table actively engaged here and they have problems that come up, and if it is a matter of consent on our part they may not ask me for consent, and with the Court's understanding, take the time that is necessary to file their briefs.

Mr. Knee: Thank you, Stan.

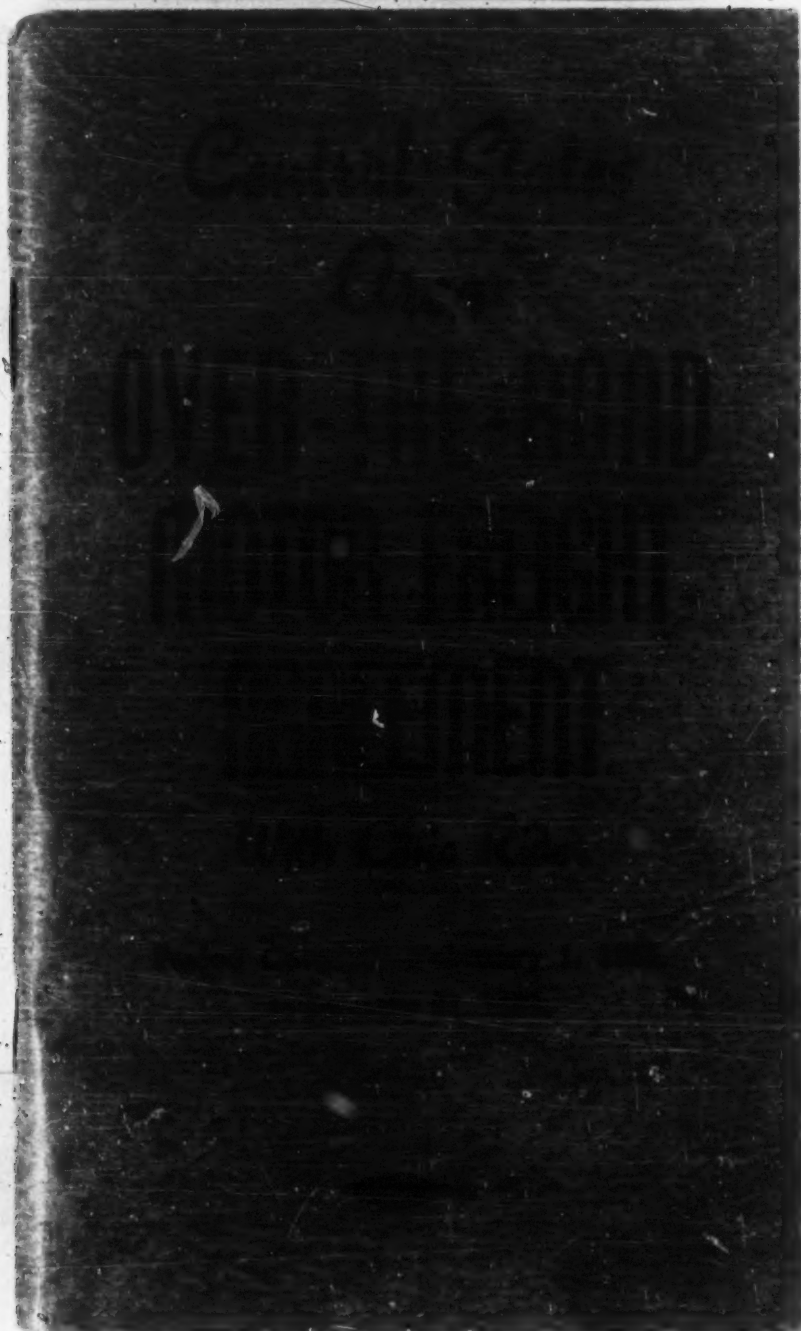
The Court: Very well. I want to say to you gentlemen I appreciate the very fine way in which all of you lawyers have contributed to making this a very orderly and pleasant trial. I think everyone has handled themselves in an admirable way. You lawyers certainly have. And I hope I can do my part in this trial in as good a fashion.

Mr. Knee: Thank you, your Honor.

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[fol. 156]

EXHIBIT 1 — PLAINTIFF



Central States
Area
OVER-THE-ROAD
MOTOR-FREIGHT
AGREEMENT
With Ohio Rider

Period Covered—February 1, 1945
to January 31, 1951

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**CENTRAL STATES AREA
OVER-THE-ROAD MOTOR FREIGHT
AGREEMENT**

**COVERING DRIVERS EMPLOYED
BY PRIVATE, COMMON, AND
CONTRACT CARRIERS**

**for the period of
February 1, 1955, to January 31, 1961,**

in the following territory:

Michigan, Ohio, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, and Louisville (Ky.), and operations into and out of all contiguous territory.

**The
(Company)**

hereinafter referred to as the Employer,

and

the Central States Drivers Council and Local Union

No., affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., hereinafter referred to as the Union, agree to be bound by the terms and provisions of this Agreement.

ARTICLE I.

Scope of Agreement

Section 1. Operations Covered The execution of this Agreement on the part of the Employer shall cover all over-the-road operations of the Employer within, into, and out of the Area and Territory described above.

Section 2. Employees Covered (a) Employees covered by this Agreement shall be construed to mean any driver, chauffeur, or driver-helper operating a truck, tractor, motorcycle, passenger or horse-drawn vehicle, or any other vehicle operated on the highway, street or private road for transportation purposes when used to defeat the purposes of this Agreement.

Student Driver (b) Employees on student trips shall be paid in accordance with the provisions of this Agreement.

Section 3. City or Local Work Local dock work or city pickup and delivery service is not subject to the terms and conditions of this Agreement, but is subject to separate agreements entered into between the Employer and the involved Local Union. Employees subject to this Agreement shall not be permitted to perform dock work or city pickup and delivery service, except as specifically permitted herein. At no time shall any provision of this contract permitting pickup and delivery supersede the provisions of any local cartage contract which prohibits such pickup and delivery.

The prevailing Local Union city cartage contract shall govern all wages and conditions on runs exclusively within a radius of twenty-five (25) miles of the

home terminal, provided the hourly wage rates are equal to or higher than the peddle rate in this contract; otherwise the peddle rate shall apply.

Section 4.
Transfer
of
Company
Title
or
Interest

This Agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceeding, such operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof. On the sale, transfer or lease of an individual run or runs, only the specific provisions of this contract, excluding supplements or other conditions, shall prevail. It is understood by this section that the parties hereto shall not use any leasing device to a third party to evade this contract. The employer shall give notice of the existence of this agreement to any purchaser, transferee, lessee, assignee, etc., of the operation covered by this agreement or any part thereof. Such notice shall be in writing with a copy to the Union not later than the effective date of sale.

Section 5.
Riders

Riders or supplements to this Agreement providing for better wages, hours and working conditions, which have previously been negotiated by Local Unions and Employers affected and put into effect, shall be continued. No new riders or supplements to this Agreement shall be negotiated by any of the parties hereto.

ARTICLE II.

Union Shop
and Dues

Section 1.

(a) The Employer recognizes and acknowledges that the Central States Drivers Council and the Local Union are the exclusive representatives of

all employees in the classifications of work covered by this Agreement for the purposes of collective bargaining as provided by the National Labor Relations Act.

- (b) All present employees who are members of the Local Union on the effective date of this subsection shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this subsection, whichever is the later. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.
- (c) When the Employer needs additional men he shall give the Local Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Local Union.
- (d) No provision of this Article shall apply in any state to the extent that it may be prohibited by state law. If under applicable state law additional requirements must be met before any such provision may become effective, such additional requirements shall first be met.

- (e) If any provision of this Article is invalid under the law of any state wherein this contract is executed, such provision shall be modified to comply with the requirements of State Law or shall be re-negotiated for the purpose of adequate replacement. If such negotiations shall not result in mutually satisfactory agreement, either party shall be permitted all legal or economic recourse.
- (f) If those instances where subsection (b) hereof may not be validly applied, the Employer agrees to recommend to all employees that they become members of the Local Union and maintain such membership during the life of this Agreement, to refer new employees to the Local Union representative, and to recommend to delinquent members that they pay their dues since they are receiving the benefits of this contract.
- (g) To the extent such amendments may become permissible under applicable Federal and State Law during the life of this Agreement as a result of legislative, administrative or judicial determination, all of the provisions of this Article shall be automatically amended to embody to greater Union security provisions contained in the 1947-1949 Central States Area Over-the-Road Motor Freight Agreement, or to apply or become effective in situations not now permitted by law.
- (h) Nothing contained in this section shall be construed so as to require the Employer to violate any applicable law.

Section 2. A new employee shall work under the provisions of this Agreement but shall be employed only on a thirty-day trial basis, during which period he may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After thirty days the employee shall be placed on the regular seniority list.

In case of discipline within the thirty-day period, the Employer shall notify the Local Union in writing.

Section 3. The Employer agrees to deduct from the pay of all employees covered by this Agreement dues, initiation fees and/or uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions. Where laws require written authorization by the employee, the same is to be furnished in the form required. No deduction shall be made which is prohibited by applicable law.

ARTICLE III.

Stewards

The Employer recognizes the right of the Union to designate a job steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. Job stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business in violation of this Agreement, except as authorized by official action of the Union. The Employer recognizes this limitation upon the authority of job stewards and their alternates. The Employer, in so recognizing such limitation, shall have the authority to render proper discipline, in-

cluding discharge without recourse, to such job steward or his alternate, if he be an employee, in the event the job steward or his alternate has taken unauthorized strike action, slow down, or work stoppage in violation of this Agreement. Job steward, where possible, shall be an employee of the Employer. It is recognized that in certain cases it will not be practicable or feasible for the job steward to be such an employee, but the parties hereto shall cooperate to effectuate the intent of this Article.

ARTICLE IV.

Absence

Section 1.

Time Off for Union Activities

The Employer agrees to grant the necessary and reasonable time off, without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business, provided 48 hours' written notice is given to the Employer by the Union, specifying length of time off. The Union agrees that, in making its request for time off for Union activities, due consideration shall be given to the number of men affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.

Section 2.

Leave of Absence

Any employee desiring leave of absence from his employment shall secure written permission from both the Union and Employer. The maximum leave of absence shall be for thirty (30) days and may be extended for like periods. Permission for same must be secured from both the Union and Employer. During the period of absence, the employee shall not engage in gainful employment in the same industry. Failure to comply with this provision shall result in the complete

loss of seniority rights for the employees involved. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights.

The employee must make suitable arrangements for continuation of health and welfare and pension payments before the leave may be approved by either the Local Union or the Employer.

ARTICLE V.

Seniority Section 1.

Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary quit, or more than a two-year lay-off. In the event of a lay-off, an employee so laid off shall be given two weeks' notice of recall mailed to his last known address. In the event the employee fails to make himself available for work at the end of said two weeks, he shall lose all seniority rights under this Agreement. A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment. Stewards shall be granted super-seniority for all purposes, including lay-off, rehire, bidding and job preference, if requested by the Local Union within sixty (60) days after the effective date of this Agreement; but only one (1) steward shall have super-seniority for such purposes. Any controversy over the seniority standing of any employee on the seniority list shall be submitted to the joint grievance procedure (ARTICLE VIII).

Terminal seniority, as measured by length of service at such terminal, shall prevail, excepting in those instances where the Employer, the Unions involved, and the Central States Drivers Council agree to the contrary.

The Local Union and the Employer shall agree, subject to the approval of the Joint Area Committee, on circumstances under which persons who leave the classification of work covered by this Agreement, but remain in the employ of the Employer in some other capacity, may retain seniority rights upon their return to their original unit. In the absence of such express agreement, such employee shall lose all seniority rights upon leaving.

Section 2. The Employer shall not require, as a condition of continued employment, that an employee purchase truck, tractor and/or tractor and trailer or other vehicular equipment.

Section 3. (a) All runs and new positions are subject to seniority and shall be posted for bids. Posting shall be at a conspicuous place so that all eligible employees will receive notice of the vacancy, run or position open for bid, and such posting of bids shall be made not more than once each calendar year, unless mutually agreed upon. Peddle runs shall be subject to bidding provided driver is qualified.

(b) When it becomes necessary to reduce the working force, the last man hired shall be laid off first, and when the force is again increased, the men are to be returned to work in the reverse order in which they are laid off.

Section 4. (a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined

by mutual agreement between the Employer and the Unions involved. Any controversy with respect to such matter shall be submitted to the joint grievance procedure (ARTICLE VIII). Such determination shall be made without regard to whether the employees involved are members or not members of a Union.

- (b) If the minimum wage, hour and working conditions in the company absorbed differ from those minimums set forth in this Agreement, the higher of the two shall remain in effect for the men so absorbed.

Section 5. The Union reserves the right to cut the seniority board when the average weekly earnings fall to \$75 or less. This is not to be construed as imposing a limitation on earnings. After the Union notifies the Employer verbally to cut the board and the Employer refuses to do so, the Union shall immediately submit its request again in writing to the Employer. If the Employer still refuses to cut the board after receiving the written request, then his refusal to do so shall be considered a grievance to be handled in accordance with the grievance procedure set forth in this contract. After the Joint State Committee or the Joint Area Committee renders a decision favorable to the Union, if the Employer still refuses to cut the board, then in such case the Union shall have the right to strike notwithstanding any provisions in this contract to the contrary and the Employer shall be obligated to pay all employees under this contract for all time lost.

ARTICLE VI.

Maintenance of Standards

Section 1.

Protection of Conditions

The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

It is agreed that the provisions of this section shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of error.

Section 2.

Extra-Contract Agreements

The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

Section 3.

Work-Week Reduction

In the event that the maximum work-week is reduced by legislative act to a point below the regular work-week provided herein, the contract shall be reopened for wage negotiations only.

Section 4.

New Equipment

Where new types of equipment for which rates of pay are not established by this Agreement are put into use, rates governing such operations shall be subject to negotiations between the parties. Rates agreed upon or awarded shall be effective as of date equipment is put into use.

ARTICLE VII.

Grievance Machinery Committees The Operators and the Unions in each of the following states shall together create a permanent Joint State Committee for such state: Michigan, Ohio, Indiana, Kentucky, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas.

Section 1.

Joint State Committees

The Joint State Committee shall consist of an equal number appointed by Employers and Unions but no less than three from each group. Each member may appoint an alternate in his place. The Joint State Committee shall at its first meeting formulate rules of procedure to govern the conduct of its proceedings. Each Joint State Committee shall have jurisdiction over disputes and grievances involving Local Unions or complaints by Local Unions located in its state.

Section 2.

Contiguous Territory

If a dispute or grievance arising out of operations under this Agreement involves a Local Union situated in contiguous territory, such dispute or grievance shall be referred to any of the above joint State Committees for handling by the Executive Secretary of the Central States Drivers Council, and after such reference shall be handled under the usual procedure of that Joint State Committee.

Section 3.

Joint Area Committee

The Operators and the Unions shall together create a permanent Joint Area Committee which shall consist of the duly elected delegates of the various Joint State Committees.

Section 4.

Function of Committees

It shall be the function of the various committees above-referred-to to settle disputes which cannot be settled between the Employer and the Local Union in accordance with the procedures established in Section 1 of ARTICLE VIII.

Section 5. Meetings of all Committees above-re-
Attend-ferred-to must be attended by each
ance-member of such Committee or his al-
ternates.

Section 6. The Local Union, Joint State Committee,
Exam-the Local Area Committee shall have
ination-the right to examine time sheets and any
of-other records pertaining to the computa-
Records-tion of compensation of any individual or
individuals whose pay is in dispute.

ARTICLE VIII.

Grievance The Union and the Employers agree that
Machinery there shall be no strike, lockout, tie-up,
and-or legal proceedings without first using
Union-all possible means of a settlement, as
Liability-provided for in this Agreement, of any
controversy which might arise. Disputes
Section 1. shall first be taken up between the Em-
ployer and the Local Union involved.

Falling adjustment by these parties, the
following procedure shall then apply:

- (a) Where a Joint State Committee, by**
a majority vote, settles a dispute, no
appeal may be taken to the Joint
Area Committee. Such a decision
will be final and binding on both
parties.
- (b) Where a Joint State Committee is**
unable to agree or come to a decision
on a case, it shall, at the request of
the Union or the Employer involved,
be appealed to the Joint Area Com-
mittee at the next regularly consti-
tuted session.
- (c) It is agreed that all matters pertain-**
ing to the interpretation of any pro-
visions of this contract may be re-
ferred, at the request of any party at

any time, for final decision to the Joint Area Committee after first being heard by the Joint State Committee and, in event of referral, the Joint State Committee's decision shall not become effective.

- (d) Deadlocked cases may be submitted to umpire handling if a majority of the Joint Area Committee determines to submit such matter to an umpire for decision. Otherwise either party shall be permitted all legal or economic recourse.
- (e) Failure of any Joint Committee to meet without fault of the complaining side, refusal of either party to submit to or appear at the grievance procedure at any stage, or failure to comply with any final decision withdraws the benefits of ARTICLE VIII.
- (f) In the event of strikes, work-stoppages or other activities which are permitted in case of deadlock, default, or failure to comply with majority decisions, no interpretation of this Agreement by any tribunal shall be binding upon the Union or affect the legality or lawfulness of the strike unless the Union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement. Nothing herein shall prevent legal proceedings by the Employer where the strike is in violation of this Agreement.

Section 2. It is further mutually agreed that the Local Union will, within two weeks of the date of the signing of this Agreement, serve upon the Company a written notice, which notice will list the Union's author-

ized representatives who will deal with the Company, make commitments for the Union generally, and in particular have the sole authority to act for the Union in calling or instituting strikes or any stoppages of work, and the Union shall not be liable for any activities unless so authorized. It is further agreed that in all cases of an unauthorized strike, slow-down, walk-out, or any unauthorized cessation of work in violation of this Agreement, the Union shall not be liable for damages resulting from such unauthorized acts of its members. While the Union shall undertake every reasonable means to induce such employees to return to their jobs during any such period of unauthorized stoppage of work mentioned above, it is specifically understood and agreed that the Company during the first twenty-four (24) hour period of such unauthorized work stoppage shall have the sole and complete right of reasonable discipline short of discharge, and such Union members shall not be entitled to or have any recourse to any other provisions of this Agreement. After the first twenty-four (24) hour period of such stoppage and if such stoppage continues, however, the Company shall have the sole and complete right to immediately discharge any Union member participating in any unauthorized strike, slow-down, walk-out, or any other cessation of work, and such Union members shall not be entitled to or have any recourse to any other provision of this Agreement. It is further agreed and understood that the Central States Drivers Council shall not be liable for any strike, breach or default in violation of this Agreement unless the act is expressly authorized by its Executive Board. A properly designated officer of the Central States Drivers Council shall, within

twenty-four (24) hours after request is made to the Secretary of the Central States Drivers Council, declare and advise the party making such request, by telegram, whether the Council has authorized any strike or stoppage of work. The Central States Drivers Council shall make immediate effort to terminate any strike or stoppage of work which is not authorized by it without assuming liability therefor.

It is understood and agreed that failure of the Central States Drivers Council to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement.

Section 3. Notwithstanding anything herein contained, it is agreed that in the event any Employer is delinquent at the end of a period in the payment of his contribution to the Health and Welfare or Pension Fund or Funds, created under this contract, in accordance with the rules and regulations of the Trustees of such Funds, after the proper official of the Local Union has given 72 hours' notice to the Employer of such delinquency in health and welfare or pension payments, the employees or their representatives shall have the right to take such action as may be necessary until such delinquent payments are made, and it is further agreed that in the event such action is taken, the Employer shall be responsible to the employees for losses resulting therefrom.

ARTICLE IX.

Protection of Rights

It shall not be a violation of this Agreement and it shall not be cause for discharge if any employee or employees refuse to go through the picket line of

a Union or refuse to handle unfair goods. Nor shall the exercise of any rights permitted by law be a violation of this Agreement. The Union and its members, individually and collectively, reserve the right to refuse to handle goods from or to any firm or truck which is engaged or involved in any controversy with this or any other Union; and reserve the right to refuse to accept freight from, or to make pickups from, or deliveries to establishments where picket lines, strikes, walk-outs or lockouts exist.

The term "unfair goods" as used in this Article includes, but is not limited to, any goods or equipment transported, interchanged, handled, or used by any carrier, whether party to this Agreement or not, at any of whose terminals or places of business there is a controversy between such carrier or its employees on the one hand, and a labor union on the other hand; and such goods or equipment shall continue to be "unfair" while being transported, handled or used by interchanging or succeeding carriers, whether parties to this Agreement or not, until such controversy is settled.

The Union agrees that, in the event the Employer becomes involved in a controversy with any other Union, the Union will do all in its power to help effect a fair settlement.

The Union shall give the Employer notice of all strikes and/or the intent of the Union to call a strike of any Employer and/or place of business, and/or intent of the members to refuse to handle unfair goods. The carriers will be given an opportunity to deliver any and all freight in their physical possession at the time of the receipt of notice.

Any freight received by a carrier up to midnight of the day of the notification shall be considered to be in his physical possession. However, freight in the possession of a connecting carrier shall not be considered to be in the physical possession of the delivering carrier.

The insistence by any Employer that his employee handle unfair goods or go through a picket line after they have elected not to, and if such refusal has been approved in writing by the responsible officials of the Central States Drivers Council, shall be sufficient cause for an immediate strike of all such Employer's operations without any need of the Union to go through the grievance procedure herein.

ARTICLE X.

Discharge or Suspension

The Employer shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension shall give at least one (1) warning notice of the complaint against such employee to the employee, in writing, and a copy of the same to the Union affected, except that no warning notice need be given to an employee before he is discharged if the cause of such discharge is dishonesty or drunkenness, or recklessness resulting in serious accident while on duty, or the carrying of unauthorized passengers. The warning notice as herein provided shall not remain in effect for a period of more than nine (9) months from date of said warning notice. Discharge must be by proper written notice to the employee and the Union affected. Any employee may request an investigation as to his discharge or suspension. Should such investigation prove that an injustice has been done an

employee, he shall be reinstated and compensated at his usual rate of pay while he has been out of work. Appeal from discharge or suspension must be taken within ten (10) days by written notice and a decision reached within fifteen (15) days from the date of discharge or suspension. If no decision has been rendered within fifteen (15) days, the case shall then be taken up as provided for in ARTICLE VIII, Section 1, of this Agreement.

Uniform rules and regulations with respect to disciplinary action may be drafted for each state but must be approved by the Joint State Committee for such state and by the Joint Area Committee. Such approved uniform rules and regulations shall prevail in the application and interpretation of this Article.

ARTICLE XI.

Loss or Damage

Employees shall not be charged for loss or damage unless clear proof of negligence is shown. This Article is not to be construed as applying to charging employees for damage to equipment.

ARTICLE XII.

Bonds

Should the Employer require any employee to give bond, cash bond shall not be compulsory, and any premium involved shall be paid by the Employer.

The primary obligation to procure the bond shall be on the Employer. If the Employer cannot arrange for a bond within ninety (90) days, he must so notify the employee in writing. Failure to so notify shall relieve the employee of the bonding requirement. If proper notice is given, the employee shall be allowed

thirty (30) days from the date of such notice to make his own bonding arrangements, standard premiums only on said bond to be paid by the Employer. A standard premium shall be that premium paid by the Employer for bonds applicable to all other of its employees in similar classifications. Any excess premium to be paid by the employee. Cancellation of a bond after once issued shall not be cause for discharge, unless the bond is cancelled for cause which occurs during working hours, or due to the employee having given a fraudulent statement in obtaining said bond.

ARTICLE XIII.

Examinations and Identification Fees

Section 1.

Physical, mental or other examinations required by a government body or the Employer shall be promptly complied with by all employees, provided, however, the Employer shall pay for all such examinations. The employer shall not pay for any time spent in the case of applicants for jobs and shall be responsible to other employees only for time spent at the place of examination or examinations, where the time spent by the employee exceeds two (2) hours, and in that case, only for those hours in excess of said two (2). Examinations are to be taken at the employee's home terminal and are not to exceed one (1) in any one (1) year. Employees will not be required to take examinations during their working hours.

The Company reserves the right to select its own medical examiner or physician, and the Union, may, if it believes an injustice has been done an employee, have said employee reexamined at the Union's expense.

Section 2. Should the Employer find it necessary to require employees to carry or record full personal identification, such requirement shall be complied with by the employees. The cost of such personal identification shall be borne by the Employer.

ARTICLE XIV.

Uniforms The Employer agrees that if any employee is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished and maintained by the Employer, free of charge, at the standard required by the Employer. No employee shall be required to wear a uniform that does not bear the Union label.

ARTICLE XV.

Passengers No driver shall allow anyone, other than employees of the Employer who are on duty, to ride on his truck, except by written authorization of the Employer.

ARTICLE XVI.

Compensation Claims The Employer agrees to cooperate toward the prompt settlement of employee on-the-job injury claims when such claims are due and owing.

ARTICLE XVII.

Military Clause Employees enlisting or entering the military or naval service of the United States, pursuant to the provisions of the Selective Service Act of 1948, shall be granted all rights and privileges provided by the Act.

ARTICLE XVIII.

Meal Period Drivers shall, except by mutual agreement, take at least one continuous hour for meals but not less than thirty (30) minutes nor more than one (1) hour in

each ten (10) hour period. No driver shall be compelled to take more than one continuous hour during such period nor compelled to take any part of such continuous hour before he has been on duty four (4) hours or after he has been on duty six (6) hours. A driver shall not, however, take any time off for meals before he has been on duty four (4) hours nor after he has been on duty six (6) hours. Meal period shall not be compulsory at terminals where driver is responsible for equipment or cargo, nor shall meal period be compulsory when or where there is no accessible eating place.

ARTICLE XIX.

Lodging

Comfortable, sanitary lodging shall be furnished by the Employer in all cases where an employee is required to take a rest period away from his home terminal. Comfortable, sanitary lodging shall mean a room with not more than two beds in it and not more than two drivers sleeping in the room at the same time, except in dormitories at company-owned terminals, with janitor service, clean sheets, pillow cases, blankets, hot and cold running water, good ventilation and easy access to clean, sanitary toilet facilities in the building.

In lieu of the Company furnishing satisfactory lodging, the employee shall be paid \$2.50 for each rest period; except where accommodation is unavailable at such figure and it is necessary for driver to pay in excess of \$2.50, he shall receive reimbursement of actual cost of room. The Company shall furnish transportation to and from the nearest public transportation, when there is no unreasonable delay, at away-from-home terminal, provided there is no public trans-

portation available in the near vicinity and further provided that this provision shall not apply where driver is allowed to use tractor for transportation.

Room rent of owner-operators shall not be deducted from gross receipts or truck earnings regardless of whether truck rental is at minimum rate or above.

No new dormitory at Company-owned terminal shall be permitted unless jointly approved by the Union and Company, subject to Central States Drivers Council approval. Such dormitory shall not be used unless janitor service, clean sheets, pillow cases, blankets, and proper sanitary conditions are provided.

ARTICLE XX.

Defective Equipment

No employee shall be compelled to take out equipment that is not mechanically sound and properly equipped to conform with all applicable city, state and federal regulations.

ARTICLE XXI.

Pay Period

All regular employees covered by this Agreement shall be paid in full each week. Not more than seven days shall be held on an employee. All other employees shall be paid at the end of their working period. The Union and Employer may by mutual agreement provide for semi-monthly pay periods. Each employee shall be provided with a statement of gross earnings and an itemized statement of all deductions made for any purpose.

ARTICLE XXII.

Paid-for Time

Section 1. General

All employees covered by this Agreement shall be paid for all time spent in the service of the Employer. Rates of pay provided for by this Agreement shall be minimums. Time shall be computed from the time that the employee is ordered to report for work and registers in and until the time he is effectively released from duty. All time lost due to delays as a result of over-loads or certificate violations involving federal, state, or city regulations, which occur through no fault of the driver, shall be paid for. Such payment for driver's time when not driving shall be the hourly rate.

Section 2. Call-In Time

Drivers called to work shall be allowed sufficient time, without pay, to get to the garage or terminal, and shall draw full pay from the time ordered to report and register in. If not put to work, employees shall be guaranteed four (4) hours' pay at the rate specified in this Agreement.

Section 3. Lay-overs

Where a driver is required to lay over away from his home terminal, lay-over pay shall commence following the fifteenth (15th) hour after the end of the run. The driver must be notified at least two (2) hours prior to the fifteenth (15th) hour, of his departure time, with an allowance to the Employer of fifteen (15) minutes from approximated starting time up to the fifteenth (15th) hour. If the driver is not called two hours in advance, as herein provided, he shall be paid for such two (2) hours. If driver is held over after the fifteenth (15th) hour, he shall be guaranteed three (3) hours' pay, in any event, for lay-over time. If he is held over more than three hours, he shall receive lay-over pay for each hour held over up to eight (8)

hours in the first twenty-three (23) hours of lay-over period, commencing after the run ends. This pay shall be in addition to the pay to which the man is entitled if he is put to work at any time within the twenty-three (23) hours after the run ends. The same principle shall apply to each succeeding twenty (20) hours, excepting the two-hour notice shall be given in such succeeding twenty-hour period prior to the twelfth (12th) hour, and lay-over pay shall commence after the twelfth (12th) hour.

On Sundays and holidays, meals shall be allowed in addition. Also, employees shall receive a seventy-five cent (75c) meal allowance each time they are held two (2) hours beyond the full lay-over period.

Driver shall not be compelled to report to work at home terminal until he has had ten (10) hours off-duty time.

Whenever any employer arbitrarily abuses the free time allowed in this section, then this shall be considered to be a dispute and the same shall be subject to being handled in accordance with the grievance procedure set forth in this contract.

Section 4.

Break-downs or Impassable Highways

On breakdowns or impassable highways, drivers on all runs shall be paid the minimum hourly rate for all time spent on such delays, commencing with the first hour or fraction thereof, but not to exceed more than eight (8) hours out of each twenty-four (24) hour period, except that when an employee is required to remain with his equipment during such breakdown or impassable highway, he shall be paid for all such delay time at the rate specified in this Agreement.

Where an employee is held longer than an eight (8) hour period, he shall in addition be furnished clean, comfortable, sanitary lodging, plus meals. The pay for delay time shall be in addition to monies earned for miles driven and/or work performed.

Section 5.
Dead-
heading

In all cases where an employee is instructed to ride or drive on Company or leased equipment, he shall receive full pay as specified in this Agreement; when instructed to deadhead on other than Company or leased equipment, the employee shall likewise receive the full rate of pay as specified in this Agreement, plus the cost of transportation.

Section 6.
Bob-
tailling

Driving of tractor without trailer shall be paid on the same basis as tractor-trailer drivers.

ARTICLE XXIII.

Pickup
and
Delivery
Limita-
tions

The operations shall be dock to dock, and there shall be no pickups or deliveries permitted at either end of the run except that one pickup of a solid load at point of origin and one delivery of a solid load at destination shall be allowed provided that the driver receives the following rate or the prevailing city scale, if higher, for such service, including time lost through delivery. At no time shall any provision of this contract permitting pickup and delivery supersede the provisions of any local cartage contract which prohibits such pickup and delivery.

Effective Feb. 1, 1955.....\$2.07 per hour
Effective Feb. 1, 1956..... 2.15 per hour
Effective Feb. 1, 1957..... 2.23 per hour

Pickup and delivery shall not be permitted where a driver or drivers or

driver and helper have driven 225 miles, or on any run which cannot be completed in ten consecutive hours from point of origin to final destination, including pickup and delivery. In no event shall pickup or delivery be permitted in any city having a population of 600,000 or more, based upon the 1950 census. It is further agreed that all pickup and/or delivery limitations in this Article shall not prohibit a driver from making pickups and/or deliveries at points en route and intermediate terminals.

Peddle run drivers shall be allowed to perform their normal duties of their runs.

It is specifically agreed that none of the limitations contained in this article shall apply to the transportation of iron, steel and perishable commodities as defined in ARTICLES XXXIX and XL of this Agreement.

ARTICLE XXIV.

Minimum Guarantees

Section 1.

The guarantees provided for by this Agreement for each of the various runs described shall be the minimum pay for the performance of each of such described runs.

Section 2.

Agreed- Upon Runs

The present compensation for agreed-upon runs shall not be disturbed except to be increased in accordance with the increases agreed upon in the 1955 Negotiations. It is understood, however, that where the mileage rate is greater than any guarantee, such mileage rate shall prevail. It is further mutually agreed that where disputes regarding bona fide agreed runs are made, such disputes shall be referred to the Joint Area Committee for consideration and final decision, with

the intent of substantiating and protecting all such established agreed runs.

(See also Ohio Rider.)

ARTICLE XXV.

Mileage and Hourly Rates

The rate of pay per mile for drivers on all runs other than peddle runs shall be as follows:

Section 1.	Single Axle Units	Per Mile
	Effective Feb. 1, 1955.....	7.45c
	Effective Feb. 1, 1956.....	7.7c
	Effective Feb. 1, 1957.....	7.95c

Tandem Axle Units (4 Axles)

Effective Feb. 1, 1955.....	7.7c
Effective Feb. 1, 1956.....	7.95c
Effective Feb. 1, 1957.....	8.2c

Tandem Axle Units (5 Axles)

Effective Feb. 1, 1955.....	7.825c
Effective Feb. 1, 1956.....	8.075c
Effective Feb. 1, 1957.....	8.325c

Tandem Axle Units Carrying a Cargo of 40,000 Lbs. or More and Jeeps

Effective Feb. 1, 1955.....	7.95c
Effective Feb. 1, 1956.....	8.2c
Effective Feb. 1, 1957.....	8.45c

Double Bottom Units or a Combination of Vehicles or Units

Effective Feb. 1, 1955.....	8.85c
Effective Feb. 1, 1956.....	9.1c
Effective Feb. 1, 1957.....	9.35c

Plus the following additional allowances:

- (a) When runs of tandem axle units and jeeps carrying a cargo of forty thousand (40,000) pounds or more are paid on an hourly guaranteed basis,

the minimum hourly guarantee shall be

	Per Hour
Effective Feb. 1, 1955.....	\$2.14
Effective Feb. 1, 1956.....	2.22
Effective Feb. 1, 1957.....	2.30

(b) The rate for double bottoms or combinations carrying a cargo of forty thousand (40,000) pounds or over shall in no event be less than the mileage or hourly rates or guarantees for tandem axle units carrying same cargo weight.

(c) Time spent in making pickups and/or deliveries at points en route and intermediate terminals and time lost through delay in pickups and/or deliveries at intermediate terminals shall be paid for at the minimum rate of

	Per Hour
Effective Feb. 1, 1955.....	\$2.07
Effective Feb. 1, 1956.....	2.15
Effective Feb. 1, 1957.....	2.23

Mileage pay shall be allowed for driving time in making pickups and/or deliveries at off-line points en route.

(d) When war heads, live ammunition and similar items excluded from regular tariffs are carried, the effective mileage and hourly rates shall be increased one-half ($\frac{1}{2}$) cent per mile in the mileage rate and fifteen (15) cents on the hourly rate. Such increases are to apply only on driving time.

Penalty rates shall apply to all types of Ammunition, Bombs, Bullets, Canisters, Cartridges, Charges, Clusters,

Dynamite, Projectiles, Rockets, Shells, Shot, Shrapnel, War Heads, Powder, and Flake T.N.T., that carry the term fixed. (The penalty shall not apply to "Small Arms Ammunition" carrying the term fixed.)

Section 2.
Mileage
Determi-
nation

In case of a dispute over mileage, same shall be computed over the route traveled by official AAA mileage. When AAA mileage is not current or available, then the latest official state highway maps shall be used to determine the correct mileage. On routes where official mileage is not given by the methods above set forth, same shall be logged by the Union and Employer, such findings to be final and binding. When route is logged, the starting point at origin shall be the main U. S. Post Office, and the ending point at destination shall be the main U. S. Post Office.

Section 3.
Mileage
Adjustment

In those cases where miles paid-for exceed miles established under ARTICLE XXV, Section 2, the excess miles shall be reduced one-sixth annually, beginning on February 1, 1955, and subsequently each February 1 during the period of this Agreement, provided that in no event shall such reduction of excess miles result in reduction of more than one-half of each annual one-fourth cent mileage increase provided herein, calculated on the mileage paid for on the effective date of this Agreement.

The first adjustment shall be made no later than June 1, 1955.

In applying the one-sixth formula, fractions shall be rounded to the closest whole number.

Where the total miles on a run are considered, fractional paid-for miles shall be

rounded to the next highest whole number.

In no case shall the reduction of miles as set forth herein change or alter existing guarantees or conditions based upon present paid-for mileage.

ARTICLE XXVI.

Peddle Runs

Section 1. Definition

Runs on which pick-up and/or delivery of freight from and to shipper, receiver, terminal or terminals en route are performed, where such runs are within seventy-five (75) miles radius of the city, with a round trip not exceeding one hundred and fifty (150) miles, shall be classified as peddle runs. Pickup and/or delivery of trailers, or delivery of a solid load, or delivery of freight to Employer's terminal, is not a peddle run operation.

Section 2. Rate of Pay

The rate of pay for the peddle operations shall be as follows, except where such rate conflicts with established higher local rates and conditions on the same operations, in which event the higher local rates and conditions shall apply. The application of local rates and conditions shall include the application of overtime rates and provisions which prevail in Local Cartage contracts. The daily and weekly overtime provisions (but not the daily and weekly guarantees) of the Local Cartage contracts prevailing at the point of origin of the peddle run shall be paid at the applicable peddle run rate.

	Per Hour
Effective Feb. 1, 1955.....	\$2.07
Effective Feb. 1, 1956.....	2.15
Effective Feb. 1, 1957.....	2.23

Section 3. Guarantee There shall be a minimum six (6) hour guarantee for miles driven and work performed on each peddle run.

Section 4. New Equipment All newly-purchased or leased equipment regularly assigned to peddle run operations must have steps or some other suitable device to enable drivers to get in and out of the body. Equipment regularly assigned to peddle runs shall have steps.

ARTICLE XXVII.

Turn-around Runs

Section 1. Hourly Rates of Pay	Per Hour
Effective Feb. 1, 1955.....	\$2.07
Effective Feb. 1, 1956.....	2.15
Effective Feb. 1, 1957.....	2.23

Section 2. On turn-around runs within a sixty-mile radius from the home terminal and where the round trip does not exceed 120 miles, drivers shall be guaranteed a minimum of six (6) hours' pay at the above applicable rates per hour. However, such drivers shall receive an eight-hour guarantee on such runs where a Local Union has been receiving an eight-hour guarantee for such short turn-around, or where the driver receives only one such short turn-around run in any one day. There shall be no free time on such short turn-around runs.

Section 3. On turn-around runs exceeding a sixty-mile radius or 120 miles round trip, but less than 190 miles round trip, drivers shall be guaranteed a minimum of eight (8) hours' pay in the first ten-hour period, plus pay for all additional

time at the above applicable rates per hour. The ten-hour period shall include one hour meal time to be taken at the point farthest-away-from-home terminal. The two-hour allowance to obtain where driver is effectively released from duty.

Section 4. On turn-around runs of 190 miles or more round trip, the above two-hour free time allowance shall not apply, but the driver may be requested to take his lunch period for not to exceed one (1) hour, and with no additional pay, at the point farthest-away-from-home terminal.

Section 5. The above guarantees are for miles driven only. Where pay for miles driven only would be higher than the guarantee, the mileage pay will prevail. Additional compensation at the above applicable rate per hour shall be paid for all time spent in performing work other than driving.

ARTICLE XXVIII.

Through Runs

Section 1.

Hourly Rates of Pay

Per Hour

Effective Feb. 1, 1955.....	\$2.07
Effective Feb. 1, 1956.....	2.15
Effective Feb. 1, 1957.....	2.23

Section 2.

On all through runs of one mile up to 160 miles there shall be a minimum guarantee of six (6) hours' pay for miles driven only, and additional compensation for all time spent in performing work other than driving at the above applicable hourly rates. The minimum daily guarantee for all work performed shall be eight (8) hours' pay. By "all work performed" is meant driving time,

pickup and/or delivery work and/or hook-up and switch time.

Section 3.

On all through runs over 160 miles there shall be a minimum guarantee of eight (8) hours' pay for miles driven only, and additional compensation for all time spent in performing work other than driving at the above applicable hourly rates.

ARTICLE XXIX.

**Subsequent
Runs**

Section 1.

Where employee accomplishes two or more turn-around runs in the same day, whether of the same or different type, he shall receive the established guarantee provided for by this Agreement, for the first run. In respect to the subsequent run, if the same is of more than four (4) hours and less than six (6) hours, he shall receive a second guarantee of six (6) hours on such run. If of less than a four-hour run, he shall receive the hourly or mileage pay called for by the operation. In determining whether a subsequent run is less than or more than four hours, all time spent by the driver on such run shall be included.

If such second or third run is of more than six (6) hours' work, he shall receive the eight-hour guarantee on each of such runs over six (6) hours. Where payment on the mileage rate will pay more than the hourly rate, the mileage rate shall prevail. The above guarantees are for miles driven only.

Section 2.

The foregoing shall not affect present arrangements where the Employer now pays two (2) or more guarantees where employee performs two (2) or more runs irrespective of length of time involved.

ARTICLE XXX.

Multiple Leg Runs

Section 1.

The multiple leg run is defined as a run which is not provided for in ARTICLES XXVI, XXVII, XXVIII and XXIX, and on which a driver picks up or drops more than one trailer and returns to his home terminal in a tour of duty. On multiple leg operations, the driver shall receive for each leg of such operation one-half of the appropriate hourly or mileage guarantee, whichever is the greater, for miles driven only. All work done en route shall be paid for in addition to the guarantee.

Section 2.

The guarantees for multiple leg runs shall be paid on the following basis:

	Per Hour
Effective Feb. 1, 1955	\$1.66
Effective Feb. 1, 1956	1.72

with a minimum of a three-hour guarantee or of mileage rate, whichever is the greater; the guarantee to be for miles driven only. Differentials in existence at the time of the execution of this contract shall be maintained. There shall be no other change in the above hourly rates, excepting as may be required by the cost-of-living provisions provided for in this Agreement.

Section 3.

A combination through-multiple leg run is a run where the driver does not begin and return to his starting point in a tour of duty, or where he is put to bed for a statutory rest period, and where a driver hooks up and drops at least one trailer in addition to the original trailer. On a combination through-multiple leg run, the driver shall be paid the appropriate hourly or mileage rate, whichever is the greater, for the longest

leg of any such combination run on the same basis as through runs are paid under ARTICLE XXVIII, meaning the full six or eight hour guarantee. With respect to the other leg or legs of such run, the driver shall be paid in accordance with Sections 1 and 2 hereof.

ARTICLE XXXI.

Two-Man Operation

The following rates of pay shall prevail for the two-man operation:

Section 1.	Two-Man Rate	Per Mile
Mileage	Effective Feb. 1, 1955.....	9.61c
Rates	Effective Feb. 1, 1956.....	9.86c
of Pay	Effective Feb. 1, 1957.....	10.11c

Single-Man Rate

Effective Feb. 1, 1955.....	4.805c
Effective Feb. 1, 1956.....	4.93c
Effective Feb. 1, 1957.....	5.055c

Section 2.

Pickup & Delivery & Delay Time

The rate of pay for pickup and delivery on delay time shall be as follows. Pickup and delivery shall be paid for at the full hourly rate for each man while on duty, but shall not apply to the man whose log of the run shows he is on a rest period at the time the pick-up or delivery is made. Full allowance for breakdown, lay-over, impassable highway and deadheading time and for lodging, etc., as specified elsewhere in this Agreement, shall obtain for both men.

Hourly Rates of Pay

	Per Hour
Effective Feb. 1, 1955.....	\$2.07
Effective Feb. 1, 1956.....	2.15
Effective Feb. 1, 1957.....	2.23

There shall be no allowance for time spent taking fuel and oil en route between terminals.

Section 3. There shall be no two-man operation on runs less than 340 miles with a 680 mile round trip unless otherwise agreed to.

Section 4. **Sleeper Cab Operations** Sleeper cab operations shall be between designated terminals with a designated home terminal. An employer shall not operate sleeper cabs over the same route where he has established relay runs or through runs, except to move an unusual or overflow of freight, and in such event drivers employed on relay runs or through runs shall have full guaranteed preference unless otherwise agreed to, and sleeper cab drivers shall be compensated either by the mileage rate or hourly rate for all time spent on such relay route.

Section 5. The lay-over provision of this Agreement shall apply at only one away-from-home terminal, and all time spent at all other points touched on a round trip from the home terminal, exclusive of meal time, is to be paid for at the full hourly rate to each man, except as provided for pick up and delivery as set forth above. The lay-over provision of this agreement is to be applicable at such away-from-home terminal the first time reached on a round trip away from the home terminal. Upon the second or subsequent arrival at such away-from-home terminal prior to return to the home terminal, all time shall be paid for both men, and the lay-over provision shall not apply.

It shall not be considered a violation of the lay-over clause for a driver to take less than a statutory 8-hour rest period.

Section 6. Bedding for sleeper cabs to be furnished and maintained by the Employer.

Section 7. Where driver teams are once established it is understood that they are not to be separated unless mutually agreed to by the company, the Union, and the driver team involved, except in case of emergency or reduction in force.

Section 8. Drivers who are off duty in the home terminal shall be notified between the hours of 4 p.m. and 6 p.m., if they are to be expected to report for work between the hours of 7 p.m. and 7 a.m.; and provided further that drivers who are off duty in the home terminal before 5 p.m., on Saturday who are called to work prior to 12 midnight Sunday shall be given not less than six hours' notice when ordered to report for duty. Above schedule can be changed only by mutual agreement between Local Union and Employer.

ARTICLE XXXII.

Owner-Operators

Section 1.

Owner-operators (See Note); other than certificated or permitted carriers, shall not be covered by this Agreement unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(NOTE: Whenever "owner-operator" is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions

of this Agreement. The owner-operator shall have seniority as a driver only.

Section 3. Certificate and title to the equipment must be in the name of the actual owner.

Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such case all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued

at the same time, but shall not be deducted in advance.

Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

Section 11. There shall be no interest or handling charge on earned money advanced prior to the regular pay day.

Section 12. (a) All certificated on permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

Per Mile

Single axle, tractor only.....	9½c
Tandem axle, tractor only.....	10c
Single axle, trailer only.....	3c
Tandem axle, trailer only....	4c

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is re-dispatched from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

Section 14. There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the Employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driven while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this

Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the "driver-owner-operator" sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the "driver-owner-operator" shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth,

for determination. The decision of the arbitration board shall be final and binding.

Section 18.

It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to ARTICLE X.

Section 19.

(a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

- (1) protecting provisions of the Union contract;
- (2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;
- (3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the con-

tract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

- (4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;
 - (5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;
 - (6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.
- (b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put addi-

tional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time.

ARTICLE XXXIII.

Vacations

Section 1.

Employees covered by this Agreement who have worked sixty per cent (60%) or more of the total working days during any twelve (12) month period, shall receive a vacation with pay of six (6) consecutive working days where they have been employed one (1) year, twelve (12) consecutive working days where they have been employed three (3) years or more, and eighteen (18) consecutive working days where they have been employed twelve (12) years or more.

Effective January 1, 1956, employees shall receive a vacation with pay of twenty-four consecutive working days where they have been employed twenty years or more, provided, however, at the option of the Employer the employee shall either take the fourth week of vacation or shall take only three weeks and receive compensation for the fourth week of vacation.

Employee, upon giving of a reasonable notice of not less than one week to his Employer, shall be given his vacation pay before starting his vacation.

It is understood that during the first year of employment the man must work 60 per cent of the total working days in order to obtain his vacation and must have been employed for the full year. During the second and subsequent years, the man must have worked 60 per cent

NOTE: See page 64 for interpretations of

ARTICLE XXXIII.

of the total working days of the year, but need not be employed for the full year to be eligible for the vacation. No more than one vacation will be earned in any 12-month period.

Section 2.

The full week's pay, except for the fourth week of vacation, shall be computed by dividing the compensation received by the employee during the twelve (12) month period by the number of days worked in said period and then multiplying the result by six. Time lost due to sickness or injury shall be considered days worked but shall not be included in computation to determine average daily earnings.

Compensation for the fourth week shall be computed on the basis of one fifty-second of the employee's earnings for the twelve-month period preceding the vacation period.

The work day and not the calendar day shall be the basis for computing the number of days worked under this section.

ARTICLE XXXIV.

Holidays

The following named holidays shall be paid for at the rate of eight (8) hours' pay for the holiday in addition to any monies the employee may earn on such holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas. In order to qualify for holiday pay, it is provided that the regular or extra employee must work the regular work-day immediately preceding or following the holiday, if said employee is requested to do so and has not exhausted his hours of work, or unless he is unable to work on account of proven

illness, or unless absence is mutually agreed to.

Employees who are serving their 30-day probationary period are not entitled to holiday pay for holidays falling within such probationary period. If a holiday falls within the vacation period of a regular employee, he shall receive pay for such holiday in addition to his vacation pay. Regular employees are entitled to holiday pay if the holiday falls within the first thirty (30) days of absence due to illness or non-occupational injury, or within the first six (6) months of absence due to occupational injury, or during periods of permissible absence under ARTICLE IV. This does not apply to employees taking leave of absence for full-time employment with the Union.

If any holiday falls within the 30-day period following an employee's lay-off due to lack of work, and such employee is also recalled to work during the same 30-day period but did not receive any holiday pay, then in such case he shall receive an extra day's pay for each holiday, in the week in which he returns to work. Said extra day's pay shall be equivalent to eight (8) hours at the straight-time hourly rate specified in the contract. An employee who is laid off because of lack of work and is not recalled to work within the afore-mentioned 30-day period is not entitled to the extra pay upon his return. Under no circumstances shall the extra pay referred to herein be construed to be holiday pay, nor shall it be considered as hours worked for weekly overtime.

ARTICLE XXXV.

Health and Welfare Benefits

The Employer shall contribute to a fund, which is to be administered jointly by the parties, the sum of two dollars and twenty-five cents (\$2.25) per week for each employee covered by this Agreement who has been on the pay roll thirty (30) days or more.

By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than six (6) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Health and Welfare Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Health and Welfare Fund, regardless of whether

the equipment rental is at the minimum rate or more.

Contributions to the Health and Welfare Fund must be made for each week on each regular or extra employee, even though such employee may work only part-time under the provisions of this contract, including weeks where work is performed for the Employer but not under the provisions of this contract, and although contributions may be made for those weeks into some other Health and Welfare Fund. Employees who work either temporarily or in cases of emergency under the terms of this contract shall not be covered by the provisions of this paragraph.

Employers presently making payments to the Central States, Southeast and Southwest Areas Health and Welfare Fund, and employers who may subsequently begin to make payments to such fund, shall continue to make such payments for the life of this agreement.

ARTICLE XXXVI.

Pension Plan

The Employer shall contribute to a pension fund the sum of two dollars (\$2.00) per week for each employee covered by this agreement who has been on the pay roll thirty (30) days or more.

This Fund shall be the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND. There shall be no other pension fund under this contract for operations under this contract or for operations under the Southeast and Southwest Areas contracts to which Employers who are party to this contract are also parties.

By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than six (6) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Pension Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Pension Fund, regardless of whether the equipment rental is at the minimum rate or more.

Contributions to the Pension Fund must be made for each week on each regular or extra employee, even though such employee may work only part-time under the provisions of this contract, including weeks where work is performed for the Employer but not under the pro-

visions of this contract, and although contributions may be made for those weeks into some other Pension Fund. Employees who work either temporarily or in cases of emergency under the terms of this contract shall not be covered by the provisions of this paragraph.

ARTICLE XXXVII.

Time Sheets

The Employer shall require the employee to keep a time sheet showing the arrival and departure at terminal and intermediate stops and cause and duration of all delays, time spent loading and unloading, and same shall be turned in at the end of each trip.

ARTICLE XXXVIII.

Posting of Agreement

A copy of this Agreement shall be posted in a conspicuous place in each garage and terminal.

ARTICLE XXXIX.

Steel Haul Only

The description of the iron and steel items is as follows:

Section 1.

Angles
Bands
Bars
Beams
Billets
Blanks (stampings or shapes; unfinished in bundles or lifts)
Channels
Coils
Pilings
Plates
Rods
Sheets
Skelps
Slabs
Strip
Tubing

Coiled rods
Wire in bundles
Rolling mill rolls and individual cast-
ings weighing more than 250 lbs.

Section 2. One pickup and one delivery of a solid load may be made by the road drivers in the event same can be performed within the Interstate Commerce Commission regulations, provided, however, no driver shall be compelled to make delivery at final destination, who has worked and/or driven ten (10) hours. There shall be no pickup or delivery of a solid load in the area under the jurisdiction of I. B. T. Locals 710, 705, 721, 782, 801, and Independent Local 705, in the Chicago area, other than those that may be permitted under the terms of such Locals' agreements.

Section 3. The minimum rates of pay for equipment owned and driven by the owner-driver shall be as follows:

	Per Mile
(1) Single axle, tractor only.....	10c
(2) Tandem axle, tractor only.....	10½c
(3) Medium tractor and single axle semi-trailer	11½c
(4) Medium tractor and tandem trailer	12c
(5) Medium truck and 4-wheel trailer	12c
(6) Large tractor, single axle semi- trailer and 4-wheel trailer.....	15c
(7) Large tractor, tandem axle semi- trailer and 4-wheel trailer.....	15½c
(8) 75% of the above rates for deadheading, if and when or-	

dered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is re-dispatched from home terminal.

NOTE: A medium tractor or medium truck is defined as a tractor or truck which has a motor of 300 to 400 cubic inches. A large tractor is defined as a tractor which has a motor of 400 to 500 cubic inches.

There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

Section 4. It is understood and agreed that the above mileage rates are minimum rates of pay for rental of equipment. In the event that companies pay on a percentage or tonnage basis, in order to test as to whether or not the above minimum mileage rates are being paid, such test shall be for a period of two weeks or semi-monthly.

ARTICLE XL.

Perishable Commodities Only The description of the perishable commodities is as follows:

	Fresh meat
	Poultry, eggs and butter (fresh or frozen)
Section 1.	Fluid milk

Frozen foods
Fresh fruits and vegetables
Fresh dairy products

Section 2. One pickup and one delivery of a solid load may be made by the road drivers in the event same can be performed within the Interstate Commerce Commission regulations, provided no driver shall make delivery at final destination who has worked and/or driven more than ten (10) hours. Where local conditions do not now permit any such pickup and/or delivery, such conditions shall continue. There shall be no pickup or delivery of a solid load in the area under the jurisdiction of I. B. T. Locals 710, 705, 721, 782, 801 and Independent Local 705, in the Chicago area, other than those that may be permitted under the terms of such Locals' agreements.

ARTICLE XLI.

Separability and Savings Clause

If any Article or Section of this contract or of any Riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this contract and of any Rider thereto, or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained, shall not be affected thereby.

In the event that any Article or Section is held invalid or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiations, upon the

request of the Union, for the purpose of arriving at a mutually satisfactory replacement for such Article or Section during the period of invalidity or restraint. If the parties do not agree on a mutually satisfactory replacement, either party shall be permitted all legal or economic recourse in support of its demands notwithstanding any provision in this contract to the contrary.

ARTICLE XLII.

Cost of Living Clause

All employees covered by this Agreement shall be covered by the provisions for a cost-of-living allowance, as set forth in this section.

The amount of the cost-of-living allowance shall be determined and redetermined as provided below on the basis of the "Consumers' Price Index for Moderate Income Families in Large Cities, New Series (All Items) Published by the Bureau of Labor Statistics, U. S. Department of Labor (1947-1949-100)," and referred to herein as the "Index."

The first cost-of-living allowance shall be effective the first pay period, beginning on or after August 1, 1955, and shall continue in effect until the first pay period, beginning on or after February 1, 1956. At that time and thereafter during the life of the Agreement, adjustments in the cost-of-living allowances shall be made semi-annually on the basis of changes in the index as follows:

**Effective Date of
Adjustment**
First pay period beginning on or after August 1, 1955, and at semi-annual intervals thereafter.

Based Upon
As of June and as of semi-annual intervals thereafter.

In the event that the Bureau of Labor Statistics shall not issue the appropriate index on or before the beginning of one of the pay periods referred to in the above table, any adjustment in the allowance required by such index shall be effective at the beginning of the first pay period after receipt of such index. No adjustments, retroactive, or otherwise, shall be made in the amount of the cost-of-living allowance due to any revision which later may be made in the published figures for the index for any month on the basis of which the allowance has been determined.

The amount of cost-of-living allowance which shall be effective for any such semi-annual period shall be determined in accordance with the following table:

Index	Allowances		
114.3 -114.84	none		
114.85-115.39	1c per hr.	.25 mill	per mi.
115.4 -115.94	2c " "	.50 " "	" "
115.95-116.49	3c " "	.75 " "	" "
116.5 -117.04	4c " "	1.00 " "	" "
117.05-117.59	5c " "	1.25 " "	" "
117.6 -118.14	6c " "	1.50 " "	" "
118.15-118.69	7c " "	1.75 " "	" "
118.7 -119.24	8c " "	2.00 " "	" "
119.25-119.79	9c " "	2.25 " "	" "
119.8 -120.34	10c " "	2.50 " "	" "

and so forth, with 1c per hour or .25 mill per mile adjustments thereafter for each .55 point change in the Index.

The cost-of-living allowance shall not become a fixed part of the base rates for any classification.

A decline in the Index below 114.3 shall not result in a reduction of classification base rates.

Continuance of the cost-of-living allowance shall be contingent upon the continued availability of official monthly Bureau of Labor Statistics Price Index in its present form and calculated on same basis as Index for December, 1954, unless otherwise agreed upon by the parties.

It is understood that the parties hereto may determine during the life of this contract what application shall be made of such cost-of-living increases in reference to where the same will be applied on provisions of this contract.

ARTICLE XLIII.

Reopening Emergency

In the event of war, declaration of emergency or imposition of economic controls during the life of this Agreement, either party may re-open the same upon sixty (60) days' written notice and request re-negotiation of matters dealing with wages and hours. Upon the failure of the parties to agree in such negotiations, either party shall be permitted all lawful economic recourse to support their request for revisions. If Governmental approval of revisions should become necessary, all parties will cooperate to the utmost to attain such approval. The parties agree that the notice provided herein shall be accepted by all parties as compliance with the notice requirements of applicable law, so as to permit economic action at the expiration thereof.

ARTICLE XLIV.

Piggy-back, Barge, Etc.

The Union reserves the right to re-open this Agreement for the purpose of negotiations for employees engaged in operations which combine with or are part of other methods of transportation such as "piggy-back," barge, etc. If the parties

are unable to agree upon such matters, the Union may engage in lawful economic recourse in support of its demands. This shall not apply to such operations as were in existence prior to January 1, 1955.

ARTICLE XLV.

Jurisdictional Disputes

In the event that any dispute should arise between any Local Unions, parties to this Agreement, or between any Local Union, party to this Agreement, and any other Union, relating to jurisdiction over employees or operations covered by this Agreement, the Employer agrees to accept and comply with the decision or settlement of the Unions or Union Tribunals which have the authority to determine such dispute. The parties do not intend by this paragraph to take away the Employer's right to designate the home domicile of his employees.

ARTICLE XLVI.

For the contract period commencing February 1, 1958, it is agreed that not more than one-half of the total agreed-to increases will apply to the multiple leg runs or to the type runs described from page 62 to page 89 of the Central States Area Over-the-Road Motor Freight Agreement dated February 1, 1952, to January 31, 1955.

Also it is agreed that the largest single increase shall apply, but in no event more than 50 per cent of the total increase in the three-year period.

ARTICLE XLVII.

Termination Clause Section 1.

This agreement shall be in full force and effect from February 1, 1955, to and including January 31, 1961, and shall continue in full force and effect from year to year thereafter unless written

notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

Section 2. It is further provided that where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice, at least sixty (60) days prior to January 31, 1961, or January 31st of any subsequent contract year, advising that such party desires to continue this Agreement but also desires to revise or change terms or conditions of such Agreement.

Section 3. Revisions agreed upon or ordered shall be effective as of February 1, 1961, or February 1st of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their request for revisions if the parties fail to agree thereon.

Section 4. Either party may, upon giving proper written notice at least sixty days prior to January 31, 1958, reopen the following provisions of this contract for the period from February 1, 1958, through January 31, 1961: 1) Mileage rates and determination; 2) Hourly rates; 3) Pensions; 4) Subsistence payments under the Lay-over Clause; 5) The clause establishing the right to cut the seniority board on a \$75 minimum; 6) Rates for Owner-Operators; 7) the Health and Welfare Clause (by the Central States Drivers Council only), if it is determined that additional contributions are required to continue or re-instate the benefits acquired by the additional 25 cents negotiated at this time; in the event that such negotiations

with respect to increased Health and Welfare contributions are required, they may be requested by the Union at any time during the last three-year period on sixty days' notice.

Any revisions agreed upon or ordered as a result of such reopening shall be effective as of February 1, 1958. The respective parties shall be permitted all legal or economic recourse to support their request for such revisions if the parties fail to agree thereon.

IN WITNESS WHEREOF the parties hereto have set their hands and seals this 14th day of January, 1955, effective as of February 1, 1955.

NEGOTIATING COMMITTEES

FOR THE EMPLOYEES:

CENTRAL STATES DRIVERS COUNCIL

JAMES R. HOFFA
(Chairman)

DALE MANN

GENE SAN SOUCIE

JOHN O'BRIEN

E. E. HUGHES

E. E. TERRY

GORDON R. CONKLIN

J. D. WHITE

ROY WILLIAMS

TED ST. PETER

GREG HELVIG

ALBERT PARKER

PAUL PRIDDY

E. D. WOODARD

SIDNEY L. BRENNAN

MICHAEL J. HEALY

(Chairman of Council)

A. F. HUDSON

(Executive Secretary)

HAROLD J. GIBBONS

(Sec.-Treas. Central States
Conference of Teamsters)

FOR THE EMPLOYERS:

HIGHWAY CARRIERS EMPLOYERS ASSOCIATION

E. W. KRAUSE

(President)

P. B. WILLAUER

(General Manager)

BARNEY CUSHMAN

GUY D. COOPER

WARREN A. TAUSSIG

FRED GIERHART

WELBY M. FRANTZ

JOHN A. MURPHY

H. T. MOLAND

GEORGE LINDNER

MOTOR CARRIERS EMPLOYERS' ASSOCIATION OF MICHIGAN

FRANK O. BLUNDEN

(General Chairman)

L. D. RAHILLY

(Road Chairman)

W. STANLEY SEITZ

A. C. SCOTT

MISS GLADYS WRIGHT

C. BYLENGA, JR.

R. H. RUMPF

DANIEL A. DARLING

CHARLES E. ZEERIP

JOHN VAN DYKE

C. D. MATHESON

(General Counsel)

A. D. MATHESON

(Secretary)

NEGOTIATING COMMITTEES—Continued

MISSOURI-KANSAS MOTOR CARRIERS CONFERENCE

GUY ROPER

E. WEILBACHER

WM. DANNEVIK, JR.

GEORGE POWELL

C. J. MORSE

(Executive Secretary)

THE STEEL TRUCKERS EMPLOYERS ASSOCIATION, INC.

E. H. ROGERS

(Chairman)

O. M. LATTAVO

H. G. McNICHOLAS

WILLIAM SLATER

J. C. HILDEBRANDT

GEO. DeVAULL

J. W. SENTLE

DANIEL ORGAN

GEORGE MAXWELL

(Secretary)

LABOR RELATIONS DEPARTMENT-O.T.A.

R. F. TODD

CHARLES V. SCHLAIRET

J. ROBERT WILSON

HERMAN E. RABE

(Counsel)

IRREGULAR COMMON & CONTRACT CARRIERS ASSOCIATION, INC.

JOHN E. MALTBY

(President)

MILTON D. RATNER

(Director)

JOSEPH B. THOMAS

(Director)

N. M. MITCHELL

(Director)

JACK A. HANNA

(Director)

ROBERT A. SULLIVAN

(Counsel)

MOTOR CARRIER LABOR ADVISORY COUNCIL

JOHN BRIDGE

(Executive Chairman)

MINNESOTA MOTOR TRANSPORT EMPLOYERS ASSOCIATION

ARTHUR A. McCUE

ROBERT E. SHORT

EDWARD L. MURPHY, JR.

IOWA OPERATORS ASSOCIATION

CY WISSEL

BIRNEY BAKER

SY HARLAN

NEBRASKA MOTOR CARRIERS' LABOR ADVISORY COUNCIL

G. HOWARD JOHNSON

(Temporary President)

N. M. KRUPINSKY

THE CLEVELAND GROUP OF CERTIFICATED AND PERMIT MOTOR CARRIERS, INC.

JOHN W. DeVENNE

(President)

BERNARD S. GOLDFARB

(General Counsel)

THE SANTA FE TRAIL TRANSPORTATION COMPANY

C. F. OFFENSTEIN

(Ass't to Vice-President)

W. A. GAMMON

(Vice-President)

TRANSAMERICAN FREIGHT LINES, INC.

ROBERT B. GOTTFREDSON

(President)

JOHN L. TOTTEN

THE CLEVELAND, COLUMBUS & CINCINNATI HIGHWAY, INC. & ASSOCIATED COMPANIES

C. J. MADIGAN

(President)

KEESHIN TRANSPORT SYSTEM

J. L. KEESHIN

(President)

LOCAL UNION No......, **affiliate of I. B. of T.,**
C., W., & H., of A., A. F. of L.

By.....
(Signed)

Its.....
(Title)

.....
(Company)

By.....
(Signed)

Its.....
(Title)

Home Office Address:

.....
(Street)

.....
(City)

.....
(State)

.....
(Date Signed)

This contract is approved as to form only by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in doing so the International Union assumes no liability whatsoever under this contract for the performance thereof or otherwise, and by such approval does not become a party to the agreement.

APPROVED NOVEMBER 5, 1954.

**INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS**

**DAVE BECK,
General President**

Interpretations of Article XXXIII

(Page 46)

Except as provided in ARTICLE XXXIII, Section 1, with respect to the fourth week of vacation, all vacations earned must be taken by employees and no employee shall be entitled to vacation pay in lieu of vacation, except, however, any employee who has quit, been discharged, or laid off before he has worked his 60%, shall be entitled to the vacation pay earned on a pro rata basis provided he has worked his first full year.

The vacation period of each qualified employee shall be set with due regard to the desire, seniority, and preference of the employees, consistent with the efficient operation of the Employer's business.

OHIO RIDER
to the
CENTRAL STATES AREA
OVER-THE-ROAD
MOTOR FREIGHT
AGREEMENT

OHIO RIDER

To the extent that the following rates of pay, terms, and conditions are better than those contained in the **CENTRAL STATES AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT** for the period from February 1, 1955, to January 31, 1961, they shall prevail over the terms of that Agreement for all members of Ohio Local Unions engaged in operations covered by such **CENTRAL STATES AGREEMENT**; otherwise, the aforesaid Area Agreement shall prevail.

A. Guar- antees

All employees shall be guaranteed a minimum of eight (8) hours' work or pay within the first nine (9) hours, when put to work after any statutory rest period; but all greater guarantees in the Area Agreement shall prevail except as provided in Section "H" of this Rider.

B. Rates of Pay

The following shall be the rate of pay:

(1) In respect to all other Ohio operations (excepting Cleveland, Toledo, and Akron):

(a) Single Axle Units **Per Hour**

Effective Feb. 1, 1955.....	\$2.12
Effective Feb. 1, 1956.....	2.20
Effective Feb. 1, 1957.....	2.28

(b) Tandem Axle Units

Effective Feb. 1, 1955.....	\$2.19
Effective Feb. 1, 1956.....	2.27
Effective Feb. 1, 1957.....	2.35

(c) Doubles and Jeeps

Effective Feb. 1, 1955.....	\$2.24
Effective Feb. 1, 1956.....	2.32
Effective Feb. 1, 1957.....	2.40

(d) The hourly rate for all work other than driving shall be:

	Per Hour
Effective Feb. 1, 1955.....	\$2.12
Effective Feb. 1, 1956.....	2.20
Effective Feb. 1, 1957.....	2.28

- (2) At Toledo (affecting members of Local No. 20) operations calling for mileage pay shall be paid as follows:

(a) **Single Axle Units—**

For the first 100 miles	Per Mile
Effective Feb. 1, 1955	7.905c
Effective Feb. 1, 1956	8.155c
Effective Feb. 1, 1957	8.405c

The premium pay for the first 100 miles at Toledo affecting members of Local 20 shall be paid on each direction of a run, but this shall apply to premium mileage pay only.

For all miles in excess of 100 miles

Effective Feb. 1, 1955	7.575c
Effective Feb. 1, 1956	7.825c
Effective Feb. 1, 1957	8.075c

(b) **Tandem Axle Units—**

For the first 100 miles	
Effective Feb. 1, 1955	8.155c
Effective Feb. 1, 1956	8.405c
Effective Feb. 1, 1957	8.655c

For all miles in excess of 100 miles

Effective Feb. 1, 1955	7.825c
Effective Feb. 1, 1956	8.075c
Effective Feb. 1, 1957	8.325c

(c) **Doubles and Jeeps**

Effective Feb. 1, 1955	8.975c
Effective Feb. 1, 1956	9.225c
Effective Feb. 1, 1957	9.475c

- (d) The hourly rate for all work other than driving shall be:

	Per Hour
Effective Feb. 1, 1955	\$2.12
Effective Feb. 1, 1956	2.20
Effective Feb. 1, 1957	2.28

(3) In respect to Akron operations affecting members of Local 24:

(a) Single Axle Units	Per Mile
Effective Feb. 1, 1955.....	7.825c
Effective Feb. 1, 1956.....	8.075c
Effective Feb. 1, 1957.....	8.325c

(b) Tandem Axle Units	
Effective Feb. 1, 1955.....	8.075c
Effective Feb. 1, 1956.....	8.325c
Effective Feb. 1, 1957.....	8.575c

(c) Doubles and Jeeps	
Effective Feb. 1, 1955.....	8.975c
Effective Feb. 1, 1956.....	9.225c
Effective Feb. 1, 1957.....	9.475c

(d) On round trips of less than 150 miles, the following hourly rates shall be paid:

Single Axle Units	Per Hour
Effective Feb. 1, 1955.....	\$2.12
Effective Feb. 1, 1956.....	2.20
Effective Feb. 1, 1957.....	2.28

Tandem Axle Units	
Effective Feb. 1, 1955.....	\$2.19
Effective Feb. 1, 1956.....	2.27
Effective Feb. 1, 1957.....	2.35

Doubles and Jeeps	
Effective Feb. 1, 1955.....	\$2.24
Effective Feb. 1, 1956.....	2.32
Effective Feb. 1, 1957.....	2.40

(e) The rate of pay for all work other than driving shall be:

	Per Hour
Effective Feb. 1, 1955.....	\$2.12
Effective Feb. 1, 1956.....	2.20
Effective Feb. 1, 1957.....	2.28

- (4) In respect to Cleveland operations involving members of Local 407:

(a) Single Axle Units	Per Hour
Effective Feb. 1, 1955.....	\$2.15
Effective Feb. 1, 1956.....	2.23
Effective Feb. 1, 1957.....	2.31

(b) Tandem Axle Units	
Effective Feb. 1, 1955.....	\$2.22
Effective Feb. 1, 1956.....	2.30
Effective Feb. 1, 1957.....	2.38

(c) Doubles and Jeeps	
Effective Feb. 1, 1955.....	\$2.27
Effective Feb. 1, 1956.....	2.35
Effective Feb. 1, 1957.....	2.43

- (d) The rate of pay for all work other than driving shall be:

	Per Hour
Effective Feb. 1, 1955.....	\$2.15
Effective Feb. 1, 1956.....	2.23
Effective Feb. 1, 1957.....	2.31

- (5) On all units or cargo weights not expressly provided for above, the rates shall be no less than the rates provided in the Area Agreement for such units and cargo weights.

C. Two-man Operations

Pickup and delivery shall be paid for at the local rates herein established for the respective localities for each man while on duty, but in no event less than contained herein. In all other respects the provisions of ARTICLE XXXI of the AREA AGREEMENT shall prevail.

D. Peddle Runs Section 1. Definition

A Local or Peddle-Run Driver shall be one who originates and terminates at his Domicile Terminal daily and whose duties are pick-up and delivery service only from or to Consignee or Shipper. However, a Peddle or Local Run that is now established as such by the Employer shall

not be disturbed unless proven to the satisfaction of the Committee representing the Union and the Employers' Group, that the same is subterfuge to defeat the purpose of this Agreement.

**Section 2.
Rate of
Pay**

The minimum rate of pay for peddle-run drivers shall be as follows, except where such rate conflicts with established higher local rates and conditions on the same operations, in which event the higher local rates and conditions shall apply. The application of local rates and conditions shall include the application of overtime rates and provisions which prevail in Local Cartage contracts. The daily and weekly overtime provisions (but not the daily and weekly guarantees) of the Local Cartage contracts prevailing at the point of origin of the peddle run shall be paid at the applicable rate. In no event shall peddle run rates of pay or conditions be less than provided in the Central States Area contract.

Per Hour

Effective Feb. 1, 1955.....	\$2.07
Effective Feb. 1, 1956.....	2.15
Effective Feb. 1, 1957.....	2.23

**E. Cause
for
Discharge**

No member shall be discharged or taken out of service by the Employer except for dishonesty, being under the influence of liquor, carrying unauthorized passengers, or except as provided in Article VIII, Section 2, of the Area Agreement, without first being given a hearing by the Employer. At such hearing an officer of the Local Union shall be present and after a decision is reached it shall be final and binding for both parties. In all other respects Article X of the Area Agreement shall apply.

**F. Health
and
Welfare
Benefits**

The Employer shall contribute to a separate Ohio Fund, which is to be administered jointly by the parties, the sum of two dollars and twenty-five cents (\$2.25) per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more.

In all other respects the provisions of ARTICLE XXXV of the AREA AGREEMENT shall apply.

**G. Agreed-
To Runs
Section 1.**

The following are the agreed-upon running time or hours in effect between Local Unions affiliated with the Ohio Highway Drivers' Council and the Employers which are referred to in Article XXIV, Section 2 of the Central States Area Over-the-Road Motor Freight Agreement. The rates of pay applicable to such agreed-to runs covered by Ohio Rider G shall be paid as set forth in (a) and (b) below:

Cost of living allowances applicable in accordance with Article XLII of the Central States Agreement shall be added to rates noted in (a) and (b) as required:

(a) In respect to all other Ohio operations (excepting Cleveland):

Single Axle Units	Per Hour
Effective Feb. 1, 1955.....	\$2.09
Effective Feb. 1, 1956.....	2.15
Effective Feb. 1, 1957.....	2.15
Tandem Axle Units	Per Hour
Effective Feb. 1, 1955.....	\$2.16
Effective Feb. 1, 1956.....	2.22
Effective Feb. 1, 1957.....	2.22
Doubles and Jeeps	Per Hour
Effective Feb. 1, 1955.....	\$2.21
Effective Feb. 1, 1956.....	2.27
Effective Feb. 1, 1957.....	2.27

(b) In respect to Cleveland operations involving members of Local 407:

Single Axle Units	Per Hour
Effective Feb. 1, 1955.....	\$3.12
Effective Feb. 1, 1956.....	2.18
Effective Feb. 1, 1957.....	2.18
Tandem Axle Units	Per Hour
Effective Feb. 1, 1955.....	\$3.19
Effective Feb. 1, 1956.....	2.25
Effective Feb. 1, 1957.....	2.25
Doubles and Jeeps	Per Hour
Effective Feb. 1, 1955.....	\$3.24
Effective Feb. 1, 1956.....	2.30
Effective Feb. 1, 1957.....	2.30

(c) The rates set forth in Ohio Rider G, Section 1, (a) and (b), apply to driving time only.

LOCAL UNION No. 24, Akron, Ohio

From Akron, Ohio, to:

	Hours
Canton	1½
Cincinnati	9½
Cleveland	2
Columbus	5½
Dayton	8
Ft. Wayne, Ind.	8
Lima	6½
Mansfield	3
Mansfield to Columbus	2½
Mansfield to Newark	5
Marion	4½
Newark	5
Youngstown	2½

LOCAL UNION No. 40, Mansfield, Ohio

From Mansfield, Ohio to:

	Hours
Akron	3
Buffalo	11
Canton	3

Local 40 Cont.		Hours
	Cleveland	4
	Detroit	7½
	Dayton	5
	Elyria	2½
	Fostoria	3
	Fort Wayne, Via 30S	5¾
	Indianapolis	10
	Marietta	6½
	Marion	1½
	Pittsburgh	8
	Sandusky	2½
	Springfield	4
	Wheeling, West Virginia	6½

Minimum, driving time only, from
Mansfield, Ohio to:

	Hours
Chicago	11½
Chillicothe	4½
Cincinnati	6¾
Columbus	2¾
East Liverpool	5¾
Findlay	2½
Fort Wayne	5
Lancaster	4
Lima	3½
Newark	2¾
Newcastle	5½
Norwalk	1½
Portsmouth	6
Shelby	¾
Toledo	4½
Zanesville	3½

From Marion, Ohio to:

	Hours
Cleveland	5
Detroit	6½
Mansfield	1½
Sandusky	3
Zanesville	4½

Local
40
Cont.

Minimum, driving time only, from Ma
rion, Ohio to:

	Hours
Akron	4½
Canton	4½
Cincinnati	5½
Columbus	1¾
Dayton	3½
Findlay	1¾
Fostoria	2
Ft. Wayne	4½
Lima	2
Springfield	2½
Toledo	3½
Youngstown	6

LOCAL UNION No. 92, Canton, Ohio
From Canton, Ohio, to:

	Hours
Akron	1½
Beaver Falls, Pa., T-A	6½
Buffalo, N. Y., T-A	20
Cincinnati	10
Cincinnati via Akron	11
Cincinnati via Dover	11
Cincinnati via Mansfield	10
Cincinnati via Springfield	10
Cleveland	3¾
Cleveland via Mansfield and return	10
Columbus	5½
Columbus via Dover	6½
Columbus via Mansfield	5½
Columbus via Wheeling	12
Dayton	8½
Dayton via Dover	9½
Dayton via Marion	8½
Dayton via Troy	9
Detroit, Mich.	8½
Detroit via Akron	8½
Detroit via Cleveland	10½
Detroit via Dover	10
Detroit via Mansfield	9½
Detroit via Marion	9½

Local
92
Cont.

	Hours
Detroit via Toledo	8½
East Liverpool, T-A	5½
Elyria, Ohio, T-A	7½
Erie, Pa.	10
Fostoria	5
Hamilton	9½
Indianapolis, Ind.	12
Mansfield	3
Marietta	6
Marion	4¾
Norwalk via Cleveland and return via Cleveland	10
Pittsburgh, Pa., T-A	10
Sandusky	4½
Springfield	7½
Toledo	6
Toledo via Akron	6
Toledo via Mansfield	6
Warren, T-A	5½
Wheeling, W. Va.	5
Youngstown	2½
Beaver Falls to Akron	3¾
Beaver Falls to Cleveland	5
Canton to Ashtabula	4½
Canton to Columbiana	2
Cleveland to Ashtabula	2½
Cleveland to Painesville	1½
Columbiana to Cleveland	3½
Columbiana to Youngstown	¾
Elyria to Cleveland	1½
Erie to Akron	5½
Erie to Ashtabula	1¾
Erie to Cleveland	4½
Erie to Columbiana	5½
Erie to Salem	5
Erie to Youngstown	4
Geneva to Cleveland	2
Painesville to Akron	2
Painesville to Canton	3½
Pittsburgh to Akron	5
Salem to Canton	1½
Salem to Cleveland	3
Sandusky to Cleveland	2½

Local
92
Cont.

	Hours
Toledo to Cleveland.....	5
Toledo to Sandusky.....	2½
Warren to Akron.....	2
Warren to Cleveland.....	2½
Warren to Pittsburgh.....	4
Warren to Sandusky.....	5
Youngstown to Akron.....	2½
Youngstown to Cleveland.....	3
Youngstown to Pittsburgh.....	3½

LOCAL UNION No. 100, Cincinnati, Ohio
From Cincinnati, Ohio, to:

	Single	Double
Akron, O.,	9½	
Anderson, Ind., via Richmond and Muncie	5½	
Ashland, Ky.	6½	7½
Baltimore, Md.	22	
Boston, Mass.	37½	
Buffalo, N. Y.	15½	
Canton, O.	9½	
Charleston, W. Va.	9	
Chicago, Ill., via Indi- anapolis	11½	
Chillicothe, O.	4	
Cleveland, O.	11	12
Columbus, O.	4½	5
Dayton, O., Direct.....	2½	3
Dayton, O., via Hamil- ton, O.,	3	3½
Detroit, Mich.	11	
Elyria, O.	9	
Erie, Pa.	14	
Everett, Pa.	18	
Fairview, N. J.	28	
Fostoria, O.	8	
Huntington, W. Va.	7	8
Huntington to Charleston, W. Va.	2	
Indianapolis, Ind.	4½	
Jersey City, N. J.	27	
Kalamazoo, Mich.	11	

Local
100
Cont.

	Single	Double
Lima, O., Direct.....	5	6
Lima, O., via Hamil- ton, O.	5½	6½
Louisville, Ky.	4½	
Mansfield, O.	6½	
Marion, O.	5½	
Maysville, Ky.	2½	3
Milwaukee, Wis.	15	
Newark, O.	5½	
New Haven, Conn.	31½	
New York, N. Y.	28	
Philadelphia, Pa.	22	
Pittsburgh, Pa., via Co- lumbus	13	
Portsmouth, O.	5½	
Richmond, Va.	21½	
Rochester, N. Y.	18½	
Springfield, O.	3½	4
Springfield, T-A	7	
Springfield, Dayton, T-A	7	
Sandusky, O.	9	
Syracuse, N. Y.	21	
Toledo, O.	9	
Toledo, O., via Marion, Ohio	10	
Wheeling, W. Va.	12	
Wheeling, W. Va., via Columbus, O.	12	
York, Pa.	21½	
Youngstown, O.	12	
Zanesville, O.	5½	
From Hamilton, Ohio, to:		Single
Akron, O.		10½
Canton, O.		10½
Chicago, Ill.		11
Chicago, Ill., via Cincinnati		12½
Chicago, Ill., via Dayton		12½
Cincinnati, Dayton, Indianapolis, T-A		11½
Cleveland, O.		10½
Columbus, O., T-A		8½
Columbus, O., via Dayton, T-A		8½
Dayton, O.		2

**Local
100
Cont.**

	Single
Dayton, Indianapolis, T-A	11½
Detroit, Mich.	10½
Fostoria, O.	7
Indianapolis, Ind., T-A	8½
Indianapolis via Cincinnati, T-A	10½
Mansfield, O.	7
Marion, O.	5½
Sandusky, O.	8
Springfield, O.	3
Toledo, O.	8
Wheeling, W. Va.	11½
Youngstown, O.	11½

**LOCAL UNION No. 377, Youngstown, O.
From Youngstown, Ohio to:**

	Hours		Mileage
Akron, O.	5	round trip	50
Amherst, O.	10	round trip	58
Ashtabula, O.	6	round trip	60
Barberton, O.	6	round trip	54
Beaver Falls, Pa.	5	round trip	45
Blawnox, Pa.	10	round trip	82
Bradford, Pa.	8	thru run	156
Brilliant, O.	8	round trip	72
Buffalo, N. Y.	7½	thru run	185
Butler, Pa.	6	round trip	52
Cambridge, O.	6	thru run	126
Cambridge Springs, Pa.	8	round trip	73
Canton, O.	5	round trip	52
Carnegie, Pa.	9	round trip	75
Charleston, W. Va.	12	thru-run	275
Cincinnati, O.	12	thru run	
Cleveland, O.	7	round trip	67
Coraopolis, Pa.	7	round trip	62
Columbus, O.	7½	thru run	170
Corry, Pa.	6	thru run	101
Creighton, Pa.	10	round trip	58
Cuyahoga Falls, O.	6	round trip	50
Dayton, O.	10	thru run	236
Defiance, O.	10	thru run	212
Detroit, Mich.	10	thru run	235

Local
377
Cont.

	Hours		Mileage
Donora, Pa.	10	round trip	105
Dover, O.	9	round trip	80
East Liverpool, O.	4	round trip	35
Erie, Pa.	8	round trip	92
Elwood City, Pa.	4	round trip	30
Elyria, O.	8½	round trip	85
Findlay, O.	7½	thru run	169
Flint, Mich.	12½	thru run	
Fostoria, O.	7	thru run	156
Fremont, O.	8	round trip	135
Galion, O.	6½	thru run	125
Geneva, O.	7	round trip	
Girard, Pa.	8	round trip	87
Grove City, Pa.	4	round trip	30
Hamilton, O.	13	thru run	286
Huntington, W. Va.	13	thru run	275
Jamestown, N. Y.	7	thru run	151
Johnstown, Pa.	6	thru run	130
Kent, O.	5	round trip	44
Lansing, Mich.	12½	thru run	
Leechburg, Pa.	10	round trip	82
Lima, O.	9	thru run	205
Lorain, O.	10	round trip	100
Loudonville, O.	6	thru run	106
Mansfield, O.	10	round trip	112
Marietta, O.	8	thru run	182
Marion, O.	7	thru run	152
Middletown, O.	11	thru run	
Mt. Vernon, O.	6½	thru run	124
McKeesport, Pa.	10	round trip	87
Newark, O.	7½	thru run	160
New Brighton, Pa.	5	round trip	40
Newton Falls, O.	4	round trip	23
New Philadelphia, O.	9	round trip	80
Niagara Falls, N. Y.	9	thru run	228
Oil City, Pa.	7	round trip	60
Painesville, O.	7½	round trip	73
Philadelphia, Pa.	17	thru run	368
Pittsburgh, Pa.	8	round trip	72
Pontiac, Mich.	11	thru run	260

Local
377
Cont.

	Hours	Mileage
Port Huron, Mich.	12½	thru run 300
Portsmouth, O.	12	thru run 268
Ravenna, O.	4	round trip 36
Rochester, N. Y.	10	thru run 250
Sandusky, O.	10	round trip 127
Scottdale, Pa.	6	thru run 112
Springfield, O.	9	thru run 219
Steubenville, O.	6	round trip 65
Toledo, O.	7½	thru run 170
Warren, Pa.	7	thru run 120
Washington, Pa.	10	round trip 80
Wheeling, W. Va.	8	round trip 85
Wooster, O.	7	round trip 82
Zanesville, O.	10	thru run 242

From Warren, Ohio, to:

Akron, O.	4	round trip
Ashtabula, O.	4	round trip
Baltimore, Md.	12	thru run
Buffalo, N. Y.	7½	thru run
Canton, O.	4½	round trip
Cincinnati, O.	12	thru run
Cleveland, O.	6	round trip
Dayton, O.	10	thru run
East Liverpool, O.	5	round trip
Elyria, O.	7½	round trip
Findlay, O.	8	thru run
Fremont, O.	12	round trip
Lima, O.	9	thru run
Mansfield, O.	10	round trip
Marion, O.	7½	thru run
Middletown, O.	11	thru run
Newark, O.	8	thru run
New York, N. Y.	18	thru run
Pittsburgh, Pa.	8½	round trip
Sandusky, O.	10	thru run
Springfield, O.	10	thru run
Steubenville, O.	7	round trip
Wooster, O.	7	round trip
Zanesville, O.	7½	thru run

From Ashtabula, Ohio, to:

Cleveland, O.	6 hrs. 40 min.	round trip
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LOCAL UNION No. 407, Cleveland, Ohio**From Cleveland, Ohio, to: Hours**

Ashtabula, O., T-A	4½
Akron, O., T-A	3
Alliance, O., T-A	4¼
Battle Creek, Mich.	9¼
Beaver Falls, Pa., T-A	10
Bedford, Pa.	11½
Boston, Mass.	33
Bryan, O.	7
Bucyrus, O., T-A	9
Buffalo, N. Y.	9
Butler, Pa., T-A	17
Cambridge, O.	6
Canton, O.	3
Chicago, Ill.	14
Chillicothe, O.	8
Cincinnati, O.	11
Columbus, O.	6
Conneaut, O., T-A	5¼
Columbiana, O., T-A	9
Dayton, O.	9
Detroit, Mich.	7½
Dinner Bell, Ind.	10
Dinner Bell via Akron	11
East Liverpool, O., T-A	10
Elwood City, Pa., T-A	11
Erie, Pa., T-A	9
Elyria, O., T-A	2½
Everett, Pa.	11½
Farrell, Pa., T-A	17
Findlay, O., T-A	10
Fort Wayne, Ind.	8¼
Fostoria, T-A	10
Flint, Mich.	9
Fremont, O.	8
Grand Rapids, Mich.	10½
Geneva, O., T-A	4
Hamilton, O.	11½
Indianapolis, Ind.	12
Indianapolis, Ind. via Akron	13
Jackson, Mich.	7¼
Jamestown, N. Y., T-A	17
Kalamazoo, Mich.	10

	Hours
Lima, O.	7
Lansing, Mich.	9
Mansfield, O.	8
Marion, O., T-A	11
McDonald, O., T-A	8
Michigan City, Ind.	11
Muncie, Ind.	11
Muskegon, Mich.	11
New Castle, Pa., T-A	17
Niagara Falls, N. Y.	10
North Baltimore, Md.	16
Newark, N. J.	20
Newark, O.	5½
Pittsburgh, Pa.	8½
Pittsburgh via Elyria, T-A	18
Pittsburgh via Painesville, T-A	18
Portsmouth, O.	11½
Pontiac, Mich.	8
Philadelphia, Pa.	18
Painesville, O., T-A	2½
Rochester, N. Y.	12
Salem, O., T-A	5¾
Sandusky, O., T-A	5
St. Louis, Mo.	20
Sharon, Pa., T-A	17
Springfield, O.	8½
South Bend, Ind.	11
Saginaw, Mich.	10½
Syracuse, N. Y.	14
Toledo, O., T-A	10
Trading Post, O., T-A	11
Tiffin, O. (single)	8
Tiffin, O. (double)	9
Tiffin, O., T-A	16
Washington C. H., Ohio	8½
Wheeling, W. Va.	8½
Warren, O., T-A	4½
Washington, Pa.	14
Youngstown, O., T-A	8½
Mansfield via Akron	5
Mansfield via Canton	6
Dayton via Akron	10
Dayton via Canton	11

Local
407
Cont.

	Hours
Dayton via Youngstown	13½
Dayton via Avon Lake	10
Dayton via Lorain	10
Dayton via Sandusky	10
Dayton via Fostoria	11
Cincinnati via Akron	12
Cincinnati via Canton	13
Cincinnati via Avon Lake	12
Cincinnati via Lorain	12
Cincinnati via Sandusky	12
Cincinnati via Fostoria	12
Cincinnati via Dayton	12
Cincinnati via Hamilton	12
Cincinnati via Springfield	11
Cincinnati via Mansfield	11
Marietta via Canton	10½
Marietta via Akron	10½
Marietta via Youngstown	12½
Marietta via Columbus	11
Columbus via Akron	7
Columbus via Canton	8
Columbus via Avon Lake	7
Columbus via Lorain	7
Columbus via Sandusky	7
Detroit via Akron	9½
Detroit via Canton	11½
Cincinnati via Elyria	11
Marietta	10
Sandusky	3

LOCAL UNION No. 413, Columbus, Ohio
From Columbus, Ohio, to:

	Hours
Akron, O.	5½
Athens, O.	3
Canton, O.	5½
Charleston, W. Va.	8
Chicago, Ill.	12
Chicago via Indianapolis	13½
Chicago via Springfield	13
Chillicothe, O.	1½
Cincinnati, O.	4½
Cleveland, O.	6

	Hours
Coshocton, O.	3
Dayton, O.	2¾
Detroit, Mich.	7½
Detroit via Dayton.....	11
Detroit via Springfield.....	9
Findlay, O.	3¼
Fort Wayne, Ind.....	5½
Huntington, W. Va.....	6
Indianapolis, Ind., via Muncie.....	6½
Kalamazoo, Mich., via Fort Wayne, Ind.....	9½
Lancaster, O.	1¼
Lima, O.	3¼
Logan, O.	2
Logansport, Ind.	8¼
Mansfield, O.	2¾
Marietta, O.	5½
Marion, O.	1¾
Massillon, O.	5
Mt. Vernon, O.	1¾
Newark, O.	1½
New York, N. Y.....	24
Parkersburg, W. Va.....	5
Pittsburgh, Pa.	8½
Portsmouth, O.	3¼
Richmond, Ind.....	4
Sandusky via Marion and Fostoria	6
Springfield, O.	1¾
Steubenville, O.	7
Toledo, O.	5
Wheeling, W. Va.....	6
Youngstown, O.	7½
Zanesville, O.	2¼

	Single	Double
Chillicothe to Cincinnati	4	
Chillicothe to Columbus		1¾
Chillicothe to Hunting- ton	3¾	
Chillicothe to Ports- mouth		2
Cincinnati to Ports- mouth	5	

Local
413
Cont.

	Single	Double
Portsmouth to Colum- bus	3¼	3¾
Portsmouth to Chilli- cothe	1¾	
Portsmouth to Cincin- nati	4, via 52	5
Portsmouth to Cincin- nati via Chillicothe....	5	
Portsmouth to Hunt- ing	1¾	
Portsmouth to Ironton..	1 hr., 5 min.	

LOCAL UNION No. 571, Elyria, Ohio

From Elyria to:	Hours
Akron, O.	2
Beaver Falls, Pa.....	5
Buffalo, N. Y.....	10
Chicago, Ill.	13
Cincinnati, O.	10
Cleveland, O.	1¾
Columbus, O.	5
Detroit, Mich.	6¾
Erie, Pa.	5
Ft. Wayne, Ind.	8
Milwaukee, Wis.	17
Norwalk, O.	1¾
South Bend, Ind.	11
St. Louis, Mo.....	22
Syracuse, N. Y.....	15
Toledo, O.	4
Warren, O.	2
Wheeling, W. Va.....	5¾
Youngstown, O.	3

LOCAL UNION No. 625, Fremont, Ohio

From Norwalk, Ohio, to:	Hours
Akron, O.	2½
Auburn	5
Battle Creek, Mich.....	7
Bellevue, O.	½
Chicago, Ill.	11
Cleveland, O.	2½
Defiance	3¾

Local
625
Cont.

	Hours
Detroit, Mich.	5
Flint, Mich.	6½
Ft. Wayne, Ind.	5½
Fremont, O.	1
Goshen, Ind.	7
Grand Rapids, Mich.	9
Hammond, Ind.	10
Jackson, Mich.	5½
Kalamazoo, Mich.	8
Kendallville, Ind.	5½
Lansing, Mich.	6½
Mansfield, O.	1½
Monroe, Mich.	3½
New Castle, Pa.	5
Pittsburgh, Pa.	7
Pontiac, Mich.	5½
Saginaw, Mich.	8
Sandusky, O.	½
Shelby, O.	1½
South Bend, Ind.	8
Toledo, O.	2½
Warren, O.	4
Warren Turn	8

From Jackson, Mich., to	Hours
Battle Creek, Mich.	1½
Detroit, Mich.	2½
Flint, Mich.	2½
Grand Rapids, Mich.	3½
Kalamazoo, Mich.	2½
Saginaw, Mich.	3½
South Bend, Ind.	4½

From Lansing, Mich., to:	Hours
Battle Creek, Mich.	1½
Chicago, Ill.	8
Flint, Mich.	1½
Fort Wayne, Ind.	4½
Grand Rapids, Mich.	2½
Jackson, Mich.	1½
Kalamazoo, Mich.	2½
Saginaw, Mich.	2½
South Bend, Ind.	5

Local
625
Cont.

From Fort Wayne, Ind., to:

	Hours
Battle Creek, Mich.	3
Chicago, Ill.	6
Detroit, Mich.	6½
Goshen, Ind.	2
Hammond, Ind.	5
Jackson, Mich.	4
Kalamazoo, Mich.	4½
Sandusky, O.	5½
South Bend, Ind.	3
Toledo, Ohio	4

From Chicago, Ill. to:

	Hours
Adrian, Mich.	8
Ann Arbor, Mich.	9½
Battle Creek, Mich.	6
Defiance, O.	9
Detroit, Mich.	10½
Flint, Mich.	10
Fort Wayne, Ind.	6
Grand Rapids, Mich.	6½
Jackson, Mich.	8
Kalamazoo, Mich.	5
Lansing, Mich.	8
Mansfield, O.	11½
Monroe	9½
Napoleon, Ind.	9½
Pontiac, Mich.	11
Saginaw, Mich.	10½
Toledo, O.	9
Ypsilanti, Mich.	10

From South Bend, Ind., to:

	Hours
Adrian, Mich.	4½
Auburn	3
Detroit, Mich.	7½
Flint, Mich.	7½
Fort Wayne, Ind.	3
Grand Rapids, Mich.	4
Jackson, Mich.	4½
Kendallville, Ind.	2½
Monroe	6½

Local
625
Cont.

From Kalamazoo, Mich., to:

	Hours
Adrian, Mich.	4
Battle Creek, Mich.	1
Benton Harbor, Mich.	2
Fort Wayne, Ind.	4½
Grand Rapids, Mich.	1½
Jackson, Mich.	2½
Lansing, Mich.	2½

From Cleveland, Ohio, to:

	Hours
Battle Creek, Mich.	9½
Defiance, O.	5½
Detroit, Mich.	7½
Elkhart, Ind.	10
Flint, Mich.	9
Fort Wayne, Ind.	8
Goshen, Ind.	10
Grand Rapids, Mich.	11½
Jackson, Mich.	8
Kalamazoo, Mich.	10
Lansing, Mich.	9½
Napoleon, Ind.	5
Pontiac, Mich.	8
Saginaw, Mich.	10
South Bend, Ind.	11

From Defiance, Ohio, to:

	Hours
Chicago, Ill.	9
Detroit, Mich., (turn)....	10½
Detroit, Mich. (single)....	10
Toledo, O., (turn)....	6
Toledo, O., (single)....	5

From Fremont to:

	Hours
Chicago, Ill.	10
Cleveland, O.	3½
Detroit, Mich.	4
Fort Wayne, Ind.	4½

Local
625
Cont.

From Port Clinton to:

	Hours
Chicago, Ill.	10½
South Bend, Ind.	7
Toledo, O.	1½
Detroit, Mich.	4
Jackson, Mich.	4½
Cleveland, O.	3

From Fostoria to:

	Hours
Akron, O.	5
Canton, O.	5
Canton via Akron.....	6½
Cleveland, O.	5
Columbus, O.	4
Dayton, O.	5
Mansfield, O.	3
Marion, O.	2
Sandusky, O.	2
Springfield, O.	4
Toledo, O.	2

From:

	Single	Double
Tiffin to Bryan.....	3½	4
Tiffin to Toledo.....	2	2½
Tiffin to Cleveland.....	4	4½
Tiffin to Detroit.....	4½	
Tiffin to Dayton.....	5	5½
Tiffin to Lima.....	2	2½
Tiffin to Fostoria.....	½	½
Tiffin to Fort Wayne....	4½	5
Tiffin to Toledo to Dayton	7½	8½
Tiffin to Findlay to Detroit	5½	
Tiffin to Findlay.....	1	1
Bryan to Toledo.....	2½	3
Cleveland to Fostoria....	4½	5
Cleveland to Lima.....	6	7
Cleveland to Toledo.....	1½	2
Detroit to Toledo.....	2½	
Findlay to Toledo.....	2	2
Fostoria to Toledo.....	1½	2

Local
625
Cont.

	Single	Double
Lima to Bryan	2½	
Lima to Toledo	3	3½
From Sandusky, Ohio, to:		
		Hours
Adgerton		4½
Adrian, Mich.		3½
Akron, T-A		7
Akron via Cleveland, T-A		8½
Alger		3½
Ann Arbor		4½
Ashland		2
Bellevue		½
Black Fork		8
Blakeslee		4½
Bowling Green		2
Bradford		6
Bryan		4
Bucyrus		2
Canton		4
Canton via Cleveland, T-A		10½
Carey		2½
Celina		5
Cincinnati		9
Cleveland		2½
Clyde		½
Columbus, T-A		10
Columbus via Clyde, T-A		10½
Columbus via Fremont, T-A		10½
Columbus via Mansfield, T-A		10½
Columbus via Norwalk, T-A		10½
Columbus Grove		3½
Columbus, Ind.		11½
Connersville		8½
Dayton		6
Defiance		4
DeGraff		5
Detroit, T-A		10
Eaton		7½
Edon		4½
Elida		4
Elkhart		7½
Erie, Pa.		6½
Erie, Pa., T-A		13

Local
625
Cont.

	Hours
Fayette	4
Findlay	2½
Firebrick	8
Fort Wayne	5½
Fostoria	2
Fremont	1
Glen Karn	6½
Greenford	5
Greenwich	1½
Gallon	2½
Hamilton	7½
Indianapolis	10½
Kenton	3½
Lima	3½
Loudonville	2½
Magnolia	4½
Mansfield	2½
Marblehead	¾
Marion	2½
Marion via Mansfield, T-A	7½
Massillon	3½
Mentor	3½
Middletown	7
Montpelier	4
Mt. Vernon	3½
Napoleon	3
Newark	4½
New Washington	1½
Norwalk	¾
Oak Harbor	1
Orville	3
Orwell	4½
Painesville	3½
Piqua	5½
Polk	2
Pittsburgh	7½
Portland	6½
Ravenna	4
Rittman	3
Rossford	2½
St. Mary's	4½
Sebring	4½
South Bend	8

**Local
625
Cont.**

	Hours
Springfield	5
Swanton	2½
Thurman	8
Tiffin	1½
Toledo	2½
Toledo via Akron, T-A.....	10½
Troy	6
Upper Sandusky	2½
Urbana	4½
Vermillion	1
Versailles	6½
West Unity	4
Weston	2½
Wooster	2½
Xenia	6
Youngstown	5½

LOCAL UNION No. 637, Zanesville, Ohio
From Zanesville, Ohio, to:

	Hours
Akron (thru Coshocton).....	4½
Canton (thru Coshocton).....	3½
Cincinnati	5½
Columbus	2½
Detroit, Mich.	9½
Indianapolis, Ind.	8½
Mansfield	3½
Marietta	2½
Newark	1½
Pittsburgh, Pa.	7

From Newark, Ohio, to:

Akron (thru Mansfield).....	5
Canton (thru Mansfield).....	5
Cincinnati	5½
Cleveland	5½
Columbus	1½
Mansfield	2½
Zanesville	1½

From Marietta, Ohio, to:

	Hours
Columbus	5
Cleveland	10
Zanesville	2½

Local
637
Cont.

	Hours
From Lancaster, Ohio, to:	
Cincinnati	4½
Columbus	1½
Zanesville	1½

LOCAL UNION No. 654, Springfield, O.
From Springfield, Ohio, to:

	Hours
Akron, O.	8
Akron via Cleveland	9½
Ashland, Ky.	5½
Chicago, Ill.	12
Chillicothe, O.	3
Cincinnati, O.	3½
Canton, O.	8
Cleveland, O.	8
Cleveland via Akron	9
Columbus, O.	1½
Dayton, O.	1
Detroit, Mich.	8
Ft. Wayne, Ind.	5
Indianapolis, Ind.	5
Indianapolis via Dayton	5½
Lima, O.	2½
Mansfield, O.	4
Mansfield via Columbus	4½
Marion, O.	2½
Sandusky, O.	5½
Toledo, O.	4½
Toledo via Fostoria	6
Toledo via Marion	6
Wheeling, W. Va.	9
Youngstown, O.	9½
Zanesville, O.	4½
From Urbana, Ohio, to	
Chicago, Ill.	10½
Columbus, O.	2
Indianapolis, Ind.	5

LOCAL UNION No. 697, Wheeling, W. Va.
Running Time—From Wheeling to:

	Single	Double
Pittsburgh, Pa., T-A	8	
Cleveland, O., T-A	8	13

Local
697
Cont.

	Single	Double
Charleston, W. Va.,		
T-A	8	16
Akron, O., T-A.....	8	10
Huntington, W. Va.,		
T-A	8	16
Parkersburg, W. Va.,		
T-A		8
Akron and Cleveland,		
T-A	8	13½
Canton	5	
Akron, O., via Canton..	6	
Cleveland, O., via Can-		
ton and Akron.....	8½	
Zanesville, O., T-A.....	4	8
Columbus, O., T-A.....	8	12
Springfield, O.	9	
Dayton, O.	9	
Cincinnati, O.	12	
Mansfield, O.	7	
Toledo, O.	10	
Detroit, Mich.	12	
Youngstown, O.	5	
Marion, O.	9	
Harrisburg, Pa.	12	
Elizabeth and New		
York relay at Har-		
risburg	12	
Charleston via Hunt-		
ington	9	
Huntington, via		
Charleston	10	
New Kingston, Pa.....	11½	
Washington, Pa., T-A..	4	

LOCAL UNION No. 908, Lima, Ohio

From Lima, Ohio, to:

	Single	Double
Akron	6½	
Anderson, Ind., T-A.....	8	
Chicago	9	
Cincinnati	5	5½
Cincinnati via Hamilton.	5½	5½
Cincinnati return		
Dayton	7	

Local
908
Cont.

	Single	Double
Cleveland	6	
Columbus via Kenton, T-A	7	
Columbus via Marion, T-A	7	
Columbus to Toledo....	8½	
Columbus to Detroit....	10½	
Canton	6½	
Dayton	3	3½
Dayton via Springfield	3½	
Detroit	5	5½
Detroit, T-A	10	11
Findlay	1¼	
Flint	7	
Flint via Detroit.....	7½	
Flint return Detroit....	9	
Ft. Wayne via Defi- ance, T-A	7¼	
Ft. Wayne	2½	
Indianapolis	5½	
Indianapolis via Nobles- ville	5½	
Indianapolis, T-A	11	
Indianapolis to Cincin- nati	9¼	
Indianapolis to Dayton	9½	
Indianapolis to Ander- son	6½	
Indianapolis to Muncie	7½	
Mansfield	3½	
Marion	2	
Muncie, T-A	7	
Pontiac	5½	
Pontiac via Detroit....	6¼	
Pontiac return Detroit	6½	
Saginaw	8	
Saginaw via Detroit....	8½	
Toledo	3	
Toledo, T-A	6	
Toledo to Cincinnati....	12	
Tiffin, T-A	4½	

Local
908
Cont.

Dayton, Ohio, to:

	Single	Double
Columbus, Detroit	9%	
Columbus, Lima	8%	
Toledo	6	7

Defiance, Ohio, to:

	Single	Double
Chicago	9	
Detroit, T-A	10	10%
Toledo, T-A	5	6

Detroit, Mich., to:

	Single	Double
Cincinnati	11	11
Cincinnati via Hamil- ton	11	11%
Columbus via Marion or Kenton	7	8
Columbus via Kenton and Marion	7%	8
Columbus via Lima and Kenton	8%	9
Columbus via Lima and Marion	8%	9
Dayton	8	9
Indianapolis Direct	10%	
Indianapolis via Nobles- ville	10%	
Lima return Toledo.....	8	

Sidney, Ohio, to:

	Single	Double
Chicago, Ill.	9%	

LOCAL UNION No. 957, Dayton, Ohio

From Dayton, Ohio, to:

	Hours
Akron, O.	8%
Baltimore, Md.	20
Boston, Mass.	36%
Bryan, O.	5
Buffalo	16
Canton, O.	8%

Local
957
Cont.

	Hours
Chicago, Ill. (via Indianapolis-Direct)	12
Chicago, Ill. (via Lima-Direct)	12
Chicago, Ill. (via Ft. Wayne, Ind.)	11
Cincinnati, O.	2½
Cleveland, O.	9
Columbus, O.	2½
Detroit, Mich.	8½
Detroit, Mich. (via Columbus)	10½
Erie, Pa.	13
Evansville, Ind.	10½
Fairview, N. J.	26
Findlay, O.	4
Flint, Mich.	10
Fort Wayne, Ind.	4½
Indianapolis, Ind.	4½
Lima, O.	3
Mansfield, O.	5
Marion, O.	4
Marietta, O.	8
Milwaukee, Wis.	16
New Haven, Conn.	29½
New York	25
Perrysburg, O.	5
Philadelphia, Pa.	21
Pittsburgh, Pa.	11½
Port Huron, Mich.	10
Richmond, Va.	23
St. Louis, Mo.	14
Sandusky, O.	7
South Bend, Ind.	8
Springfield, Ill.	12
Springfield, O.	1
Tiffin, O.	5
Toledo, O.	5½
Washington, D. C.	21½
Wheeling, W. Va.	9
Youngstown, O.	10
Akron, O.	8
Canton, O.	8
Lima, O.	3½
Marion, O.	3½
Cleveland Relay	10

**G. Agreed-
To-Runs
(cont.)
Section 2.**

- (1) Agreed-to Runs, as set forth in Article "G," Section 1, above, represent the minimum agreed to runs between the various points for members of the Ohio Local Unions as specified. In the event an Employer, at any listed city, has been paying a premium for the run higher than the minimum set forth herein for the same run, then and in that event, the Employer shall continue the premium compensation. (Article VI page 11, Area Agreement).
- (2) Employers opening a Terminal in a city in which there are existing agreed-to runs, as listed in Art. "G," Sec. 1, above, or who seek to run the same points covered by said agreed-to runs, then and in that event, the Employer shall pay the contract rate but in no event less than the minimum agreed-to runs as set forth in this Ohio Rider.
- (3) Any Employer who has been operating from a city in which there are agreed-to runs, as set forth in Art. "G," Sec. 1, above, and who has not been paying those minimum agreed-to runs, but has been paying the contract rate for the runs within the meaning and intent of this agreement, and who has not been violating this agreement, then his method of computation for such runs shall remain in force and effect.
- (4) It is specifically understood and agreed that the agreed-to runs, as

set forth in Art. "G," Sec. 1, above, shall not be expanded or diminished during the life of this Agreement; and no new runs, unless mutually agreed to by the Employer and Local Union, and ratified by The Joint State Committee.

- (5) Pay for agreed-to runs shall in no event be less than payment under the mileage rates set forth in Articles XXV, and XXXI of the Area Agreement.

Section 3. In the application of the terms of Ohio Rider, Art. "G" the following understanding shall prevail:

- (1) The schedule of agreed upon running times is subject to correction in those instances where payroll records will substantiate such correction.
- (2) There shall be no requirement to convert to an agreed upon running time method of payment (except as may be required by Ohio Rider, Art. "G," Section 2, Paragraph (2), if all of the following conditions are met:
 - (a) The employer operated in compliance with the preceding Ohio Contract or Central States Agreements.
 - (b) If the employer is paying on a time-clock basis he pays the Ohio hourly rate, observes the eight hour minimum daily guarantee, and the time-clock payments amount to at least the amounts which would be payable for the work performed under

the Central States Agreement for time, mileage, or guarantee, whichever is the greater.

- (c) If the employer is paying on a mileage basis, such mileage payments amount to at least the amount which would be due under the Ohio hourly rate for the actual driving time involved, and no less than would be payable under the Central States Agreement for time, mileage, or guarantee, whichever is the greater.
- (3) The Ohio Rider and the Central States Agreement shall not be construed as permitting or requiring the termination or modification, directly or indirectly, of agreed-on running times now properly in effect.
- (4) Only the agreed-upon runs in effect on February 1, 1952, shall be considered to be effective.

H. Subsequent-Run and Multiple-Leg-Run Guarantees

The subsequent-run and multiple-leg guarantees of the Area Agreement shall not apply on intra-state operations in Ohio unless mutually agreed upon by or between the Employers and Ohio Unions, provided that in no event shall employees on such intra-state runs receive for each tour of duty less compensation than would be due under the provisions of the Central States Area Agreement relating to such type of runs. An intra-state-run is one on which the load originates and terminates in the State. A tour of duty means all work performed within a ten (10) hour period.

By the execution of this Rider, the parties hereto understand and agree that they are also bound by all terms and conditions of the **CENTRAL STATES AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT** for the period from February 1, 1955, to January 31, 1961, of which this Rider is a part.

.....
(Company)

.....
(Home Office Address)

By

.....
(Title)

Local Union No.

By

.....
(Title)

Dated this day of, 19.....

EXHIBIT 1 — PLAINTIFF

By the execution of this Rider, the parties hereto understand and agree that they are also bound by all terms and conditions of the **CENTRAL STATES AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT** for the period from February 1, 1955, to January 31, 1961, of which this Rider is a part.

.....
(Company)

.....
(Home Office Address)

By

.....
(Title)

Local Union No.

By

.....
(Title)

Dated this day of, 19.....

[fol. 159]

EXHIBIT 4—PLAINTIFF

#798

#798 TO

MOTOR FREIGHT TRANSPORTATION
AGREEMENT

THIS AGREEMENT, by and between A.C.E. TRANSPORTATION CO., INC., a corporation of Akron, Ohio, hereinafter designated the CARRIER, and Revel Oliver hereinafter designated as the OPERATOR,

WITNESSETH:

WHEREAS, Carrier is a common carrier of property by motor vehicle operating in interstate commerce and certificated by the Interstate Commerce Commission and state utility commissions to perform such service, and

WHEREAS, Operator is the owner of the motor vehicle equipment herein described, and enters into this agreement for the purpose of furnishing transportation service to Carrier under the terms and conditions set forth herein, it being understood and agreed by the parties hereto, that if this agreement is not executed by the Operator personally, that the undersigned, in executing the same, is acting as an agent of the Operator and represents that he has full power of attorney and is authorized by the Operator to act in his place and stead and to do and perform each and every act and thing which this Agreement requires Operator to do.

NOW, THEREFORE, in consideration of the mutual promises and agreements by the parties hereto, Operator agrees as follows:

To provide the Carrier with the transportation service between the points and over the routes designated by carrier as will be more specifically set forth by waybills for each individual shipment, and a manifest or load sheet which will be given Operator for each trip to be made by means of the motor vehicle equipment herein set forth.

That the equipment described herein is and at all times during the continuance of this agreement, will be maintained in the first class repair at the expense of Operator and that he will pay all costs in connection with the operation of said equipment; that he will furnish license plates and registration certificates required for said motor vehicle equipment by the state of his residence.

That said equipment will be operated at his expense by himself or by competent employees of his in a careful manner.

That he will pick up, transport, and deliver punctually freight received by him while in the transportation service of Carrier.

To secure delivery receipts, properly signed and dated, covering all freight transported hereunder by Operator and to handle such transportation business in such a manner as to promote the good will and good reputation of Carrier.

To, at all times, display certificate numbers of the Carrier while operating over the routes and in the service of the Carrier, and at no other time whatsoever, so that when the motor vehicle equipment described herein is not used in the service of Carrier, all certificate numbers, names or other means of identification showing the same was operated in the service of the Carrier will be removed therefrom.

That the equipment will be operated only over the certified routes of Carrier.

To comply at all times, with all laws, rules, and/or regulations of the Interstate Commerce Commission, Bureau of Motor Carriers, or any public utilities commission of any state or other authority of any state in or through which the motor vehicles herein described may be operated under this Agreement and which may be binding or obligatory on either party hereto.

To report to the Carrier any and all accidents involving equipment herein, or loss or damage to the freight or cargo therein to such individuals as Carrier may designate.

To provide Workmen's Compensation coverage for his drivers and employees and to be responsible for the payment of all premiums due under any Workmen's Com-

pensation law and to pay all state and federal taxes for unemployment compensation insurance, old age pensions, and other social security, and to meet all requirements or regulations now or hereafter adopted or promulgated by any legal constituted authority with respect to all persons engaged by him in the performance of this Agreement and, further, agrees to indemnify and keep indemnified Carrier against all liability by reason of his failure to do so.

To sign all load or manifest sheets or have his drivers or employees do so for each load transported hereunder and to collect freight, C.O.D. and any other charges on specific shipments when directed by written instructions on freight bills, manifests, load sheets, or otherwise, to do so.

The carrier will provide full coverage insurance such as property damage, public liability and cargo, except on cargo when such loss occurs by reasons of fire, theft, wet freight, collision, or upset occurring when equipment is in transit, then, in that event, the maximum liability of the operator shall be Two Hundred Fifty Dollars (\$250.00).

The relationship herein created is that of independent contractor and not that of employer and employee. Operator is a contractor only and not the employee of Carrier.

It is mutually understood and agreed that Carrier shall not be obligated to pay any fines or settlements that may be assessed against Operator or against his employees by reason of any violation of any law or regulation by him or them.

The Carrier shall not be liable to Operator for any damage sustained by or to the equipment of Operator, while the equipment is engaged in said transportation service or for loss by confiscation or seizure of the equipment by any public authority.

In such cases where operator tractor pulls a trailer belonging to carrier or the carrier tractor pulls a trailer belonging to an operator, or an operator tractor pulls a trailer belonging to another operator, the owner of the tractor shall be liable for all losses sustained resulting from damage to the said trailer while being so used,

limited, however, to the sum of Two Hundred and Fifty Dollars (\$250.00) in each accident.

It is further agreed by and between the parties hereto, that no verbal agreements or understandings of any kind or character have been entered into; that any previous agreements are hereby voided and revoked by this Agreement and that all Agreements between the parties are set forth herein, and that this Agreement shall, at all times, be interpreted under the laws of the state of Ohio.

Compensation on a per ton basis between authorized points of service will be made according to published schedule (copy annexed). Pick up and deliveries made by the Operator on L. T. L. shipments will be paid at the rate of _____ per cwt., except pick up or deliveries made to connecting lines or delivery carriers the rate will be _____ per cwt. with a maximum of Ten Dollars (\$10.00) when the work is performed by the Operator. All truck load or volume shipments pick up or deliveries taking a truck load or volume rating will be made free of charge.

Settlement will be made the 15th of each succeeding month, or the operator may draw any money on the books upon the completion of each trip and only when Operator has delivered to Carrier delivery receipts, trip sheets, driver's logs, or any other records required to be kept by Carrier. If there are any loss or damages to the freight while in transit by the Operator, of C.O.D.'s freight charges or other amounts not accounted for, such monies, and amount of any claims, will be deducted from the compensation due Operators.

Upon the termination of this Agreement, Operator will return to Carrier, any property or equipment belonging to Carrier including documents, papers, identification plates, public utility tax cards, and any other evidence of operating authority belonging to Carrier.

This contract shall be effective when approved by a duly authorized agent of the Carrier and shall terminate when all conditions have been complied with by the parties hereto.

#798 TRACTOR: '51 Int'l RD 406 6024 5681 10 CE 98
 Make Motor No. Serial No. License No.
 Ohio
 State

#798 To TRAILER: '53 Fruehauf AV 173098 95 AK 11
 Make Motor No. Serial No. License No.
 Ohio
 State

Signed in duplicate this 28 day of December, 1953.

Signed in presence of:

/s/ C. S. PREACHER

A.C.E. TRANSPORTATION Co., INC.
 By /s/ W. E. METCALF
 Carrier

/s/ REVEL OLIVER
 Operator

[fol. 168]

PLAINTIFF'S EXHIBIT 13

TRUCK LEASE

THIS AGREEMENT by and between Revel V. Oliver of 1152 Packard Dr., Akron, Ohio, LESSOR, and INTER-STATE TRUCK SERVICE, INC. of Martins Ferry, Ohio, LESSEE.

WITNESSETH:

1. The lessor hereby leases to the lessee the following described vehicle equipment:

Make of Tractor	Serial No.	State	License No.
Mack	B-61 T 5257	Ohio	9 L 920 AK-2
Make of Trailer	Serial No.	State	License No.
Ohio Body	T-2055	Rhode Island	10682 AK-102

Wherever it (or they) may be, for a period of Eight (8) Months & Two (2) Weeks commencing at 12:01 AM, the 20th. day of June 1955 and expiring at 11:59 PM, the 29th. day of February 1956.

2. The lessor will furnish for operating of the said vehicle or vehicles the required lubricants and fuel, the necessary repairs and maintenance to keep vehicle or vehicles in proper operating condition, and will also furnish one or more competent drivers, as may be the case.

3. During the period of this lease the said vehicle or vehicles shall be solely and exclusively under the direction and control of the lessee who shall also be liable to the shipper or consignee for any loss or damage not caused by the operation of the said vehicle or vehicles by the lessee, and for any public liability resulting from the said operation by the lessee subject however, to such, if any, rights or subrogation which the insurance companies of the lessee may have under the circumstances.

4. Upon the expiration of this lease possession of the vehicle or vehicles will be promptly restored to the lessor.

5. In consideration of the foregoing, lessee agrees promptly to pay lessor and the lessor agrees to accept as hire of the said equipment and reimbursement for the services of any driver or drivers the following compensation:

70/75% of The Revenue Accruing to Interstate Truck Service, Inc., Depending On Commodity, Less Charges.

Signed in quadruplicate this 20th. day of June 1955.

It is understood that this agreement may be cancelled by either party upon five days notice, provided that the lessor shall complete delivery of all freight which he may have enroute or under load at the time of notice of cancellation.

/s/ REVEL OLIVER LESSOR

By

INTERSTATE TRUCK SERVICE, INC.
Lessee

By /s/ HOWARD F. NEWELL

RECEIPT BY CARRIER

The Undersigned carrier hereby acknowledges the receipt of the equipment described on the reverse side hereof from the owner the 20th. day of June, 1955, at 12:01 o'clock A.m.

INTERSTATE TRUCK SERVICE, INC.

By /s/ HOWARD F. NEWELL

RECEIPT BY OWNER

The Undersigned owner hereby acknowledges the receipt of the equipment from carrier in acceptable condition from carrier on this 29th day of Feb. 1956, at 11:59 o'clock P.M., thus terminating the lease set forth on the reverse side hereof.

.....
(Owner)

By

[fol. 188] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 189] IN THE COURT OF COMMON PLEAS

[Title omitted]

JOURNAL ENTRY RE DISMISSAL OF CERTAIN DEFENDANTS
—Filed July 13, 1956.

1. Upon the oral motion of the plaintiff for permission to reopen the case solely for the purpose of requesting the Court to dismiss the action as to all defendants named in the petition and served with summons and as to all others who have been made parties defendant to the proceeding, except the A. C. E. Transportation Company, In., (sic) Freight Drivers Local No. 24, and Kenneth Burke, Business Agent, and for the purpose of striking from said petition all reference to owners of motor freight equipment similarly situated with the plaintiff and with the request that the cause proceed wholly in behalf of plaintiff himself and not for the benefit of any other parties and it appearing to the Court that no other owner-operators have intervened herein and no other owners of motor freight

equipment have joined as plaintiffs or have sought any relief herein and it appearing that defendants, A. C. E. Transportation Company, Inc., Freight Drivers Local No. 24, and Kenneth Burke, will not be prejudiced by the granting of the plaintiff's request and that no further or greater burden is placed upon them by the granting of the request of the plaintiff, it is hereby Ordered, Adjudged and Decreed that all defendants heretofore named, served or who have answered herein, excepting A.C.E. Transportation Company, Inc., Freight Drivers Local No. 24 and Kenneth Burke, be and they are hereby dismissed and it is further Ordered, Adjudged and Decreed that the plaintiff's request to reopen the case for the purposes aforesaid is hereby granted and all reference to the Petition and proceedings relative to owners of motor freight equipment who are similarly situated with the plaintiff be and is [fol. 190] hereby stricken from the allegations of the petition and without reverification said petition is so amended to conform to the evidence that has been offered herein. To all of which exceptions are granted to interested parties.

Approved:

Stanley Denlinger, Attorney for Plaintiff.

Stephen C. Colopy, Judge.

[File endorsement omitted]

[fol. 191] IN THE COURT OF COMMON PLEAS

No. 196,714

REVEL OLIVER, Plaintiff,

VS.

ALL STATES FREIGHT, INC., et al., Defendants.

FINDINGS—July 26, 1956.

Colopy, J.

APPEARANCES:

Stanley Denlinger, Esq., 1622 First National Tower,
Akron, Ohio, counsel on behalf of Plaintiff.

David Previant, Esq., of Padway, Goldberg, and Previant, 212 West Wisconsin Avenue, Milwaukee, Wisconsin; Robert C. Knee, Esq., Winters Bank Building, Dayton, Ohio; and Bruce E. Laybourne, Esq., Second National Building, Akron, Ohio, counsel on behalf of Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Kenneth Burke.

Charles R. Iden, Esq., of Brouse, McDowell, May, Bierce and Wortman, 2200 First National Tower, Akron, Ohio, counsel on behalf of A.C.E. Transportation Company, Inc., and Interstate Truck Service, Inc.

This action was instituted as a class suit by the Plaintiff, Revel Oliver, and "all other owners of motor freight equipment similarly situated, as the Plaintiff," against numerous local unions, affiliated with "The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers," Kenneth Burke, the President and Business Agent for Local No. 24, and many common carriers, as the Defendants. The Plaintiff has since dismissed from the action all other owners of motor freight equipment situated as the Plaintiff and all defendants except Local No. 24, (an affiliate of said Union), Kenneth Burke, the A.C.E. Transportation Company, Inc., and Interstate Truck Service, Inc. In the first cause of action, the Plaintiff seeks an order enjoining the Defendants from carrying out the terms of a certain contract and for equitable relief. The second cause of action, in which damages are sought from the defendants now stands withdrawn.

The Plaintiff is now and has been at all times in question the owner of ten units of motor freight equipment consisting of four tractors and six trailers each of which is under a lease agreement with one or the other of the said defendant companies. The defendant companies are engaged in the business of transporting freight both within and outside of Ohio. It is admitted by the parties that the Plaintiff and the defendant carriers, the lessees of the equipment, are engaged in interstate commerce. (Here-

after the names of the Defendant lessees will be abbreviated for brevity.)

The importance of this action suggests that the provisions of the leases and Article 32 of the contract under attack should be fully set forth.

The provisions of the leases with the Defendant A.C.E. are:

"MOTOR FREIGHT TRANSPORTATION AGREEMENT

"THIS AGREEMENT, by and between A.C.E. TRANSPORTATION Co., Inc., a corporation of Akron, Ohio, hereinafter designated the CARRIER, and [fol. 193] hereinafter designated as the OPERATOR,

"WITNESSETH :

"WHEREAS, Carrier is a common carrier of property by motor vehicle operating in interstate commerce and certificated by the Interstate Commerce Commission and state utility commissions to perform such services, and

"WHEREAS, Operator is the owner of the motor vehicle equipment herein described, and enters into this agreement for the purpose of furnishing transportation service to Carrier under the terms and conditions set forth herein, it being understood and agreed by the parties hereto, that if this agreement is not executed by the Operator personally, that the undersigned, in executing the same, is acting as an agent of the Operator and represents that he has full power of attorney and is authorized by the Operator to act in his place and stead and to do and perform each and every act and thing which this Agreement requires Operator to do.

"Now, THEREFORE, in consideration of the mutual promises and agreements by the parties hereto, Operator agrees as follows:

"To provide the Carrier with the transportation service between the points and over the routes designated by carrier as will be more specifically set forth by waybills for each individual shipment, and a manifest

or load sheet which will be given Operator for each [fol. 194] trip to be made by means of the motor vehicle equipment herein set forth.

"That the equipment described herein is and at all times during the continuance of this agreement, will be maintained in the first class repair at the expense of Operator and that he will pay all costs in connection with the operation of said equipment; that he will furnish license plates and registration certificates required for said motor vehicle equipment by the state of his residence.

"That said equipment will be operated at his expense by himself or by competent employees of his in a careful manner.

"That he will pick up, transport, and deliver punctually freight received by him while in the transportation service of Carrier.

"To secure delivery receipts, properly signed and dated, covering all freight transported hereunder by Operator and to handle such transportation business in such a manner as to promote the good will and good reputation of Carrier.

"To, at all times, display certificate numbers of the Carrier while operating over the routes and in the service of the Carrier, and at no other time whatsoever, so that when the motor vehicle equipment described herein is not used in the service of Carrier, all certificate numbers, names or other means of identification showing the same was operated in the service of the [fol. 195] Carrier will be removed therefrom.

"That the equipment will be operated only over the certified routes of Carrier.

"To comply at all times, with all laws, rules, and/or regulations of the Interstate Commerce Commission, Bureau of Motor Carriers, or any public utilities commission of any state or other authority of any state in or through which the motor vehicle herein described may be operated under this Agreement and which may be binding or obligatory on either party hereto.

"To report to the Carrier any and all accidents involving equipment herein, or loss or damage to the

freight or cargo therein to such individuals as Carrier may designate.

"To provide Workmen's Compensation coverage for his drivers and employees and to be responsible for the payment of all premiums due under any Workmen's Compensation law and to pay all state and federal taxes for unemployment compensation insurance, old age pensions, and other social security, and to meet all requirements or regulations now or hereafter adopted or promulgated by any legal constituted authority with respect to all persons engaged by him in the performance of this Agreement and, further, agrees to indemnify and keep indemnified Carrier against all [fol. 196] liability by reason of his failure to do so.

"To sign all load or manifest sheets or have his drivers or employees do so for each load transported hereunder and to collect freight, C.O.D., and any other charges on specific shipments when directed by written instructions on freight bills, manifests, load sheets, or otherwise, to do so.

"The carrier will provide full coverage insurance such as property damage, public liability and cargo, except on cargo when such loss occurs by reason of fire, theft, wet freight, collision, or upset occurring when equipment is in transit, then, in that event, the maximum liability of the operator shall be Two Hundred Fifty Dollars (\$250.00).

"The relationship herein created is that of independent contractor and not that of employer and employee. Operator is a contractor only and not the employee of Carrier.

"It is mutually understood and agreed that Carrier shall not be obligated to pay any fines or settlements that may be assessed against Operator or against his employees by reason of any violation of any law or regulation by him or them.

"The Carrier shall not be liable to Operator for any damage sustained by or to the equipment of Operator, while the equipment is engaged in said transportation service or for loss by confiscation or seizure of the equipment by any public authority.

[fol. 197] "In such cases where operator tractor pulls a trailer belonging to carrier or the carrier tractor pulls a trailer belonging to an operator, or an operator tractor pulls a trailer belonging to another operator, the owner of the tractor shall be liable for all losses sustained resulting from damage to the said trailer while being so used, limited, however, to the sum of Two Hundred and Fifty Dollars. (\$250.00) in each accident.

"It is further agreed by and between the parties hereto, that no verbal agreements or understandings of any kind or character have been entered into; that any previous agreements are hereby voided and revoked by this Agreement and that all Agreements between the parties are set forth herein, and that this Agreement shall, at all times, be interpreted under the laws of the state of Ohio.

"Compensation on a per ton basis between authorized points of service will be made according to published schedule (copy annexed). Pick up and deliveries made by the Operator on L. T. L. shipments will be paid at the rate of per cwt., except pick up or deliveries made to connecting lines or delivery carriers the rate will be per cwt. with a maximum of Ten Dollars (\$10.00) when the work is performed by the Operator. All truck load or volume shipments pick up or deliveries taking a truck load or volume [fol. 198] rating will be made free of charge.

"Settlement will be made the 15th of each succeeding month, or the operator may draw any money on the books upon the completion of each trip and only when Operator has delivered to Carrier delivery receipts, trip sheets, driver's logs, or any other records required to be kept by Carrier. If there are any loss or damages to the freight while in transit by the Operator, of C.O.D.'s, freight charges or other amounts not accounted for, such monies, and amount of any claims, will be deducted from the compensation due Operators.

"Upon the termination of this Agreement, Operator will return to Carrier, any property or equipment belonging to Carrier including documents, papers, identi-

fication plates, public utility tax cards, and any other evidence of operating authority belonging to Carrier.

"This contract shall be effective when approved by a duly authorized agent of the Carrier and shall terminate when all conditions have been complied with by the parties hereto.

TRACTOR:	Make	Motor No.	Serial No.
	License No.		State

"TRAILER :		
Make	Motor No.	Serial No.
	License No.	State

[fol. 199] "Signed in duplicate this day of
....., 195.....

A.C.E. TRANSPORTATION Co., Inc.

"Signed in presence of:

By
Carrier

Operator"

The provisions of the leases with Interstate are:

"TRUCK LEASE

THIS AGREEMENT by and between of
....., LESSOR, and INTERSTATE TRUCK SERVICE,
Inc. of Martins Ferry, Ohio, LESSEE.

"1. The lessor hereby leases to the lessee the following described vehicle equipment:

Make of Tractor	Serial No.	State	License No.
-----------------	------------	-------	-------------

Make of Trailer _____ Serial No. _____ State _____ License No. _____

Wherever it (or they) may be, for a period of
 commencing at the day of
 19..... and expiring at the day of
 19.....

"2. The lessor will furnish for operating of the said vehicle or vehicles the required lubricants and fuel, the necessary repairs and maintenance to keep vehicle [fol. 200] or vehicles in proper operating condition, and will also furnish one or more competent drivers, as may be the case.

"3. During the period of this lease the said vehicle or vehicles shall be solely and exclusively under the direction and control of the lessee who shall also be liable to the shipper or consignee for any loss or damage not caused by the operation of the said vehicle or vehicles by the lessee, and for any public liability resulting from the said operation by the lessee subject however, to such, if any, rights or subrogation which the insurance companies of the lessee may have under the circumstances.

"4. Upon the expiration of this lease possession of the vehicle or vehicles will be promptly restored to the lessor.

"5. In consideration of the foregoing, lessee agrees promptly to pay lessor and the lessor agrees to accept as hire of the said equipment and reimbursement for the services of any driver or drivers the following compensation:

70/75% of The Revenue Accruing to Interstate Truck Service, Inc., Depending on Commodity, Less Charges.

"Signed in quadruplicate this day of
 19.....

[fol. 201] "It is understood that this agreement may be cancelled by either party upon five days notice, provided that the lessor shall complete delivery of all

freight which he may have enroute or under load at the time of notice of cancellation."

..... Lessor

By

INTERSTATE TRUCK SERVICE,
Lessee

By

While the aforesaid leases were in effect the Union and the said Defendant Carriers executed the contract (Ex. 19 and 21 of R.) which is the subject of the controversy. The provisions of Article 32 are:

"Owner-Operators

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operator shall operate exclusively in such service and for no other interests.

(NOTE: Whenever 'owner-operator' is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

[fol. 202] "Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment must be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of,

and by which, the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no [fol. 203] longer than two weeks, except where the lease of equipment agreement is terminated and in such case all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines

and penalties for inadequate certificates, license fees, [fol. 204] weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement. [fol. 205] "(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per Mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispached from home

terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half ($\frac{1}{2}$) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at [fol. 206] point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimum established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the Employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same

conform to this Agreement, the question of dissolution [fol. 207] or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies [fol. 208] of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services

on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to ARTICLE X.

"Section 19 (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

- (1) protecting provisions of the Union contract;
- [fol. 209] (2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;
- (3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;
- (4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;
- (5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

- (6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the [fol. 210] 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

“(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time.”

This action was filed and a preliminary injunction obtained against the Union and said Defendant Carriers after they informed the Plaintiff that his leases were about to be cancelled pursuant to said Article 32. According to the testimony of the Defendant Burke, the terms of the contract would have been enforced except for the temporary injunction having been issued (R. 103).

The contract was entered into after extended negotiations between representatives of the Union Locals and representatives of the Carriers. There has been no picketing or strike action taken. The Plaintiff, as well as numerous other owner-operators, has at all times in question maintained membership in the Union. The Plaintiff per- [fol. 211] sonally operates one of the units covered by the leases although his driving has not been regular and consistent.

The contract in question has been generally adopted by Common Carriers and Locals of the Union throughout the twelve central states including Ohio. It covers in all 3,000 to 3,500 carriers, and 40,000 to 50,000 employees. Four hundred fifty to five hundred of the carriers, and five to six thousand of the employees are in the State of Ohio.

Approximately five to ten percent of these employees are owner-operators.

I have drawn conclusions as follows from a consideration of the pleadings, the evidence, and the briefs:

- 1st—Article 32 of the contract is not within the protection provided by Sec. 157 of the Labor Management Relations Act of 1947 (hereafter referred to as L. M. R. A.) (29 U. S. C. A.);
- 2nd—Article 32 violates Sec. 1331.01 R. C. of Ohio and is void;
- 3rd—The Plaintiff will be injured if the parties carry out the provisions of Article 32;
- 4th—The Plaintiff has no remedy under the L. M. R. A. or any other federal legislation;
- 5th—Jurisdiction in the state courts exists; and
- 6th—It is the duty of this court to exercise its powers to restrain the parties from enforcing the terms of Article 32.

As to the Union's claim that its action is authorized it should be observed that Sec. 157 of the L. M. R. A. provides [fol. 212] that "Employees shall have the right to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection . . ." Sec. 158d of the Act reads, "For the purpose of this section, to bargain collectively is the performance of the employer and the representatives of the employees to meet . . . and confer . . . with respect to wages, hours, and other terms and conditions of employment."

The Union claims that Article 32 deals with the subject of wages in this way. It asserts that the owner-driver's wages will in effect be reduced if the Carrier is allowed to lease equipment from the owner-driver at a figure less than the actual cost of its operation. The contract provides for an indirect method of protecting his wages against a possible imprudent business venture. I do not believe Sec. 157 can be reasonably construed to permit this remote

and indirect approach to the subject of wages. If the contrary is true then it would seem to follow that it is proper in any case to fix the price of an employer's products on the theory that if it is left to him to do he might fix it so low as to ultimately impair his employees' wages and the jobs themselves. The Union claims that the tractor-trailer here may be compared to the tools which an employee owns and uses in the work. An analysis of the two situations will show material differences. The tractor-trailer represents a very substantial capital investment, whereas the tools do not. The tractor-trailer has been made the subject of a separate and distinct business transaction in which the owner has transferred all or part of [fol. 213] his interest in the same for a time to another party for a remuneration. This is not the case where the employee retains his interest in his tools and makes such use of them that they become an integral and inseparable part of his labor. It is significant in this connection that the Union and the Defendant Lessee-Carriers themselves have in their contract separated the subject of the owner-driver's tractor-trailer from the subject of his labor. The subject matter dealt with in Article 32 with respect to altering the provision of the leases was outside the legitimate scope of "wages, hours, and other terms and conditions of employment." And this is true in my opinion, irrespective of whether the Plaintiff's technical status is that of employee or independent contractor. (For a list of some of the subjects that may be included in other "terms and conditions" in a collective bargaining agreement, see Forkosch, *A Treatise of Labor Law*, p. 874). The case of *Los Angeles Pie Bakers Association v. Bakery Drivers Local (Calif.)* 264 Pac.2d, 615, brings no support to the Union's claim. There the Union sought to change the method of payment of the owner-driver who used his truck in the distribution of pies. For his equipment the Union proposed that he receive compensation based on a designated discount from the retail price. This said the Court is the equivalent of wages for overall services. The fixing of prices of the pies was not there involved. Neither was there any proposed negotiation concerning the delivery

wagon that the owner-driver retained in connection with the rendition of his services. The cases cited by the Court at Page 619 of its opinion shows that it recognized that a [fol. 214] contract between a union and an employer group in fixing prices of commodities would be contrary to the anti-trust laws of that state.

The argument that is premised upon the workmen's right to organize and negotiate in concert under Section 157 of the L. M. R. A. was made by a union to support its action in maintaining control over the catching, marketing and price fixing of fish, in *Commonwealth v. McHugh* 93 N.E. 2d, 751 (Mass). In rejecting the claim, the court said,

P. 760, "We cannot agree with the defendants' argument that they have done nothing more than engage in ordinary labor union activities for the purpose of improving their economic condition. Doubtless their ultimate purpose was to improve their economic condition, but that is the purpose of all persons who engage in monopolistic enterprises."

Like all rights created by law, the rights created by Section 157 in favor of organized employees is not absolute as the Union seems to contend. It is limited in extent and relative in character and must be balanced against competing rights of other persons and the public. Each and every case to which any reference has been made in which the court enjoined the union from continuing a course of tortious conduct, or allowed damages for same, conclusively rebuts the Union's contention that its right to act in concert carries unqualified immunity.

Article 32 of the contract undoubtedly violates Section 1331.01 R. C. of Ohio. That statute provides:

[fol. 215] "1331.01 Definitions. (G.C. Secs. 6390, 6391).

As used in sections 1331.01 to 1331.14, inclusive, of the Revised Code:

(A) 'Person' includes corporations, partnerships and associations existing under or authorized by any state or territory of the United States or a foreign country.

(B) 'Trust' is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

(1) To create or carry out restrictions in trade or commerce;

(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;

(3) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity;

(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state;

(5) To make, enter into, execute, or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure of fixed [fol. 216] value, or by which they agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves and others so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected.

A trust as defined in division (B) of this section is unlawful and void."

It appears on the face of the contract under attack that all essential elements to constitute a violation exist. There

are restrictions and restraints imposed upon articles that are widely used in trade and commerce. Such restrictions are the direct and inevitable result of the concerted action of the Union combining with a non-labor third party in a formal contract. The restraints imposed are not reasonable in character and thus countenanced in the law. The restraints in question are unreasonable. Their effect is to oppress and destroy competition. They preclude an owner of property from reasonable freedom of action in dealing with it. In the Greater Cleveland Livery Owners Association case 73 N. E. 2d, 104, at P. 107, His Honor, Judge McNamee, quotes the following pertinent statement from Chief Justice Fuller in *U. S. v. E. C. Knight Co.*, "Again, all the authorities agree that, in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition."

None of the authorities cited support the Union's claim that Article 32 does not constitute an unreasonable restraint of trade. The case law strongly indicates the contrary. See *Allen Bradley v. Local Union No. 3*, 325 U. S. 797; *Giboney v. Empire Storage and Ice Co.*, 336 U. S. 490; and *Commonwealth v. McHugh*, supra. The following language of the Court in the *Giboney* case answers much of the Union's claim in the present action:

"It is too late in the day to assert, against statutes which forbid combinations of competing companies, that a particular combination was induced by good intentions."

and, further, at Page 841:

"To exalt all labor union conduct in restraint of trade above all state control would greatly reduce the traditional powers of states over their domestic economy and might conceivably make it impossible for them to enforce their antitrade restraint laws. See *Allen Bradley Co. v. Local Union No. 3*, I.B.E.W. 325 US 797, 810, 89 L ed 1939, 1948, 65 S Ct 1533."

and at page 844:

[fol. 218] "... They were exercising their economic power together with that of their allies to compel Empire to abide by union rather than by state regulation of trade ...

"While the State of Missouri is not a party in this case, it is plain that the basic issue is whether Missouri or a labor union has paramount constitutional power to regulate and govern the manner in which certain trade practices shall be carried on in Kansas City, Missouri. Missouri has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way ... We hold that the state's power to govern in this field is paramount ..."

It is self-evident that performance of the terms of Article 32 will injure the Plaintiff. His power to exercise rights incident to ownership over property in which he has an interest is materially limited. It is an injury or damage that the law recognizes. The fact that such injury cannot be fairly measured in a law action for damages is the basis for this action in equity.

Pronouncements of the U. S. Supreme Court give a clear standard for determining the issue as to jurisdiction. The rule is simply this: If the Federal enactments provide a remedy in a federal board or court, the jurisdiction of the state court is impliedly excluded. If the Federal law fails to provide any such remedy, the state court's jurisdiction [fol. 219] remains. See *Allen Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740; *Garner v. Teamsters Union* 485; and *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656. The L. M. R. A. provides no remedy for Plaintiff's complaint. Under that act, the Defendant Union cannot be charged with any tortious conduct. The Act (Sec. 158 being the pertinent part) does not prohibit the conduct herein involved. The state court does not lose jurisdiction over the grievance for the alleged reason that all the parties are engaged in interstate commerce. In support of this statement see *International Union of U. A. W. A. v. Wisconsin Employ-*

ment Relations Board, 336 U. S. 245, 254; and Commonwealth v. McHugh, supra. If the Union's broad claim that the exclusive jurisdiction to regulate the interstate motor truck industry deprives the court of jurisdiction over this wrong to the Plaintiff, then it would seem to follow that the driver of the vehicle engaged in such commerce would not have to respond in the state courts for damages resulting from his negligence in the state. Nor in that situation could the state enforce its speed laws against such driver. The correct answer would seem to be that the state is not regulating the motor industry in applying its anti-trust laws in this manner.

Considerable has been said in the briefs concerning the Plaintiff's status under the leases. It is my thought that his status as to being an employee or independent contractor in no manner conditions his right to prevail. This action does not involve any issue about the Plaintiff's right to organize owner-drivers. Apparently that has been done [fol. 220] within the trucking industry without a challenge being made by anyone. For this reason, those cases involving controversies as to organizing business workers are not discussed. According to the "right of control" test applied by His Honor, Judge Goodrich in the case, N.L.R.B. v. Nu-Car Carriers 189 Fed. 2d 756, the Plaintiff's status is that of an independent contractor. And I accordingly fix his status as such under the leases. The legal consequence of his being an independent contractor is that the L. M. R. A. expressly excludes him from its provisions. Section 4 of Article 32 of the contract, however, would make him an employee of the Lessee.

A question arises concerning the effect of the Plaintiff being a member of the Defendant Local that negotiated and executed the contract which is the subject of his complaint. Why isn't he in the same position as though he personally executed the challenged contract? In the Young v. Coöperage Co. case, 164 OS p. 491, His Honor, Judge Zimmerman said, "... Plaintiff as a Union member was represented by the Union in the agreements made between it and Defendant and was bound by their terms." Representation that binds a party is the kind that is based upon express or implied authority that has been delegated. In

the present case, the Union negotiated as to a capital investment of one of its members on subjects that do not directly concern his wages, or hours, or other terms and working conditions. Also it does not seem likely that implied authority would be delegated to the Union to act for a member in making a contract prohibited by law.

Counsel for the Plaintiff shall furnish a journal entry [fol. 221] that appropriately provides for complete and effective relief. It shall allow proper exceptions.

[fol. 222] IN THE COURT OF COMMON PLEAS

[Title omitted]

JOURNAL ENTRY REFININGS AND JUDGMENT—

Filed October 3, 1956

1. This cause came on to be heard upon the plaintiff's amended petition, the answers of the defendants, A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and Kenneth Burke, the President and Business Agent for Local No. 24, upon the evidence, the briefs of counsel for all parties and after due and careful consideration the Court finds:

2. (2) (sic) While leases for the rental of plaintiff's motor equipment were in effect between plaintiff and defendant carriers, the Union and Defendant Carriers executed a contract, the provisions of Article 32 being as follows:

"Owners-Operators

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICG and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(NOTE: Whenever 'owner-operator' is used in this article, it means owner-driver only, and nothing in this

article shall apply to any equipment leased except where owner is also employed as a driver.)

[fol. 223] "Section 2. This eype (sic) of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment mus (sic) be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such cases all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certifi-

[fol. 224] cated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the Lease [fol. 225] agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete

accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

"b" The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per Mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal;

thereafter the full equipment rental rate to apply until driver is redispached from home terminal; the above rates to be based on 23,000 pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point [fol. 226] of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimums

established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform (sic) to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union Scale of wages as provided in this [fol. 22] Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to ARTICLE X.

[fol. 228] "Section 19 (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

- (1) protecting provisions of the Union contract;
- (2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;
- (3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will effect the rights of drivers under the terms of the con-

tract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over the Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1956, and ending January 31, 1961.

[fol. 229] "(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment.

This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives he can hold seniority where he works sixty (60) per cent or more of time".

2. (b) Plaintiff is an independent contractor.

(c) Article 32 of the contract is not within the protection provided by Section 157 of the Labor Management Relations Act of 1947 (hereafter referred to as L.M.R.A. (29 U.S.C.A.)

(d) Article 32 violates Sec. 1331.01 R.C. of Ohio and is void.

(e) The Plaintiff will be injured if the parties carry out the provisions of Article 32;

(f) The Plaintiff has no remedy under the L.M.R.A. Or any other federal legislation;

(g) Jurisdiction in the state court exists and

(h) It is the duty of this court to exercise its powers to restrain the parties from enforcing the terms of Article 32.

3. It is therefore Ordered, Adjudged and Decreed:

(a) That the defendants, A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and each of them, their agents representatives and successors or persons, acting, by, through or for them, or in concert with each other, are hereby perpetually restrained and enjoined from entering [fol. 230] into any agreements one with the other or carrying out the effects, requirements or terms of any such agreement; which will require the alteration, cancellation or violation of plaintiff's existing lease or leasing agreement or any such agreement hereafter renewed or renegotiated and entered into, and

(b) That the defendants, A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., Local No. 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successor of each and those acting in concert with said defendants are hereby perpetually (sic) enjoined and restrained from entering into any combination, arrangement, or stipulation in the future, or the negotiation therefor, the purpose, intent or tendency of which is to fix or determine in any manner the rate to be charged for the use of plaintiff's equipment, leased by said plaintiff to the defendants, A.C.E. Transportation Co., Inc., and Interstate Truck Service Inc., and

(c) That the said defendants, A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successors of each are hereby perpetually enjoined from giving force and effect to Section 32 of the Contract between them as is fully set forth in this Court's finding, or any modification or alteration thereof, the import, effect or tendency of which shall attempt to fix the rates and the use of plaintiff's equipment or to fix or determine the return for plaintiff's capital investment in said equipment. [fol. 231] 4. To all of which finding, judgment and order, the defendants and each of them are granted proper exceptions. Appeal Bond required by R. C. 2505.06 is fixed at \$500.00.

Stephen Colopy, Judge.

Stanley Denlinger, Attorneys for Plaintiff.

Charles R. Iden, Attorneys for A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc.

David Pieviant, (sic) Robert C. Kane, Bruce B. Laybourne, Attorneys for Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and Kenneth Burke, President and Business Agent of Local No. 24.

[File endorsement omitted]

[fol. 232]

IN THE COURT OF COMMON PLEAS

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS—

Filed: October 15, 1956

Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, two of the Defendants herein, hereby give

notice of their appeal to the Court of Appeals, Ninth Judicial District, on questions of law and fact from the judgment decree and final order rendered herein on the 3rd day of October, 1956.

David Previant, Robert C. Knee, Bruce B. Laybourne, Attorneys for Appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke.

AFFIDAVIT OF SERVICE OF COPY OF NOTICE OF APPEAL (omitted in printing).

[File endorsement omitted]

[fol. 233]

IN THE COURT OF COMMON PLEAS

PRAECIPE—Filed October 15, 1956

To the Clerk:

Prepare and file in the Court of Appeals for Summit County, Ohio a transcript of the Docket and Journal Entries with all original papers in the above entitled action.

Dated October 15, 1956.

David Previant, Robert C. Knee, Bruce B. Laybourne, Attorneys for Appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke.

[File endorsement omitted]

[161. 234]

IN THE COURT OF COMMON PLEAS

No. 196 714

Court of Appeals No. 4679

Supreme Court of Ohio No. 35454

REVEL OLIVER, 1152 Packard Drive, Akron, Ohio, Appellee,

vs.

ALL STATES FREIGHT, INC., et al., 1250 Kelly Avenue, Akron,
Ohio, A. C. E. TRANSPORTATION COMPANY, 241 James
Street, Akron, Ohio, INTERSTATE TRUCK SERVICE, INC.,
Defendants,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS LOCAL #24, 348 E. South
St., Akron, Ohio, KENNETH BURKE, 349 E. South St.,
Akron, Ohio.

TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES
TO COURT OF APPEALS

January 20, 1955.	Petition & Affidavit filed.
January 20, 1955.	Motion filed.
January 20, 1955.	Precipe filed.
January 20, 1955.	Journal Entry filed. January Term. Harvey, J.
January 22, 1955.	Injunction Bond filed.
January 28, 1955.	Journal Entry filed. January Term. Harvey, J.
February 16, 1955.	Journal Entry filed. January Term. Thomas, J.
March 30, 1955.	Motion & Brief filed.
April 4, 1955.	January 1955 Term continued to April 1955 Term.

June 3, 1955.	Answer, Deft. A.C.E. Transportation Co., Inc., filed.
June 29, 1955.	Answer, Deft. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, & Helpers of America, A.F.L. and Locals, and Kenneth Burke, filed.
September 12, 1955.	April 1955 Term continued to September 1955 Term.
[fol. 235]	
January 7, 1956.	September 1955 Term continued to January 1956 Term.
April 2, 1956.	January 1956 Term continued to April 1956 Term.
July 13, 1956.	Journal Entry filed. April Term. Colopy, J.
July 26, 1956.	Finding, Colopy, J.
September 10, 1956.	April 1956 Term continued to September 1956 Term.
October 3, 1956.	Journal Entry filed. September Term. Colopy, J.
October 15, 1956.	Notice of Appeal filed.
October 15, 1956.	Precipe filed.
October 15, 1956.	Supersedeas Bond filed.

[fol. 236] Clerk's Certificate to foregoing Papers (omitted in printing).

[fol. 238]

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

No. 4679

REVEL OLIVER, Appellee,

—VS—

ALL STATES FREIGHT, INC., et al., Appellees,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL #24, et al., Appellants.

STATE OF OHIO,
SUMMIT COUNTY, ss.:

Transcript of Evidence

APPEARANCES:

Stanley Denlinger, Attorney at Law, Present on behalf of Oliver, Appellee;

Charles R. Iden, Attorney at Law, Present on behalf of A.C.E., Appellee;

Robert C. Knee, Attorney at Law, Present on behalf of Defendant-Appellants;

David Previant, Attorney at Law, Present on behalf of Defendant-Appellants;

Bruce B. Laybourne, Attorney at Law, Present on behalf of Local #24, Appellants.

Be It Remembered that upon the trial of the above entitled case, on the 20th day of February, 1957, being a day in the February Term 1957 of the Ninth Judicial District Court of Appeals, the following proceedings were had:

[fol. 239] COLLOQUY BETWEEN COURT AND COUNSEL

Judge Hunsicker: Gentlemen, we have the case of Revel Oliver, Appellee, versus the All States Freight and others, who are appellees, and the International Brotherhood of Teamsters, Local 24, and others. There is an appeal on questions of law and fact.

I am assuming that there is some testimony. I have heard there is an indication that there is some testimony to be taken. I assume that most of the testimony, however, will be presented by transcript.

Mr. Denlinger: If your Honor please, the transcript of the testimony in the lower court will be stipulated by the parties as to be considered by Your Honors. One small additional point that the Appellee here desires to offer to the court will be submitted in the form of two letters which counsel in the case will identify and admit for your consideration. The transcript and those letters will complete the case of the Appellee.

Mr. Knee: May it please this Honorable Court, I should like to present to this Court David Previant of the Milwaukee Bar, who will participate actively in this case, with your permission.

Judge Hunsicker: Fine.

Mr. Previant: On behalf of the Appellants there is a desire to supplement the record before the lower court by the testimony of two witnesses. We believe that that testimony will be comparatively brief. The bulk of the case is represented by the evidence that has been submitted to the [fol. 240] lower court. We thought that it might be helpful to the Court if even before offering any further testimony in the case, there might be some opening statement by both parties so that the Court might get some idea of what the case is about, but, of course, we will take the Court's judgment on that.

Judge Hunsicker: We have done this, we have read the pleadings, all of us have read the pleadings, read the opinion rendered by Judge Colopy in the trial court. Obviously we can learn something by additional statements of counsel. I merely make that statement to you. I don't want to cut you off from making an opening statement. Of

course, Mr. Denlinger has the privilege of going forward, being the plaintiff in this court.

Mr. Denlinger: We are ready, Your Honor.

Judge Hunsicker: Do you wish to make an opening statement?

Mr. Denlinger: We would like to do so. I will make it brief.

Judge Hunsicker: Let's get some idea how long the opening statements are going to be.

Mr. Denlinger: May it please Your Honors, gentlemen—

Judge Hunsicker: How long do you think you will take for your opening statement?

Mr. Denlinger: I would say that this will approximate ten to twelve minutes, Your Honor.

Judge Hunsicker: Okay.

OPENING STATEMENT BY MR. DENLINGER ON
BEHALF OF OLIVER, APPELLEE

Mr. Denlinger: This matter is before you on appeal [fol. 241] on questions of fact and law from a decision and order of Honorable Judge Colopy of the Common Pleas Court of this county. As Your Honors have stated, you have read it, and I will certainly not take your time in repeating it now.

In the case below, Revel Oliver, as the owner and operator of motor trucks and trailers for two common carrier defendants, the A.C.E. Transportation Company and the International Truck Service, brought this action seeking to restrain the defendants from continuing certain acts, arrangements, combinations and practices, and particularly seeking a restraining order against the defendants from enforcing certain terms and conditions of a contract known as the Central States Area Over-The-Road Agreement, effective from February 1st, 1955, to January 31st, 1961.

Now, the plaintiff asserted that that contract, particularly Section 32 thereof, constituted a violation of our Revised Code 1331.01, generally known as the Valentine Act of Ohio, and that section I am sure Your Honors have read in con-

nection with the pleadings and other papers in the case, and I will not repeat that. It is that act of Ohio which declares it to be illegal to restrain trade by certain acts and conduct prohibited by the statute.

Now, the defendants in the original action included a great many common carriers in the State of Ohio, but included particularly the A.C.E. Transportation Company and the Interstate Trucking Company, and the officers and local unions of the Teamsters International Union, all of the latter being voluntary labor organizations and [fol. 242] signatories to the Central States Area Over-The-Road Agreement.

In addition to the restraining order, the plaintiff below requested damages as provided by the code in connection with cases in violation of the Valentine Act. Prior to completing our case, the plaintiff requested the Court to withdraw the claim for money damages and proceed solely on the request for a restraining order. The Court granted the request, and the monetary damage claim was withdrawn and not given consideration in the court below and is not a matter for Your Honors' consideration here.

After the evidence from all of the parties was submitted, the plaintiff requested leave to dismiss all of the defendants, that is, all of the carriers except the two common carriers, The A.C.E. Transportation (sic) and International and Local 24, and Kenneth Burke, its business agent. Consequently, we now stand before Your Honors with Revel Oliver as the sole plaintiff and with the A.C.E., International Local 24 of the Teamsters and Kenneth Burke as the sole defendants.

Our petition is drawn on the claim that Revel Oliver, as an owner and operator of motor equipment used in the transportation business, has had his contractual rights over his equipment destroyed by the contract known as the Central States Area Over-The-Road Agreement, a contract to which he was not a party, and to the terms and conditions of which he never assented.

For a long period of time prior to the execution of that [fol. 243] contract in January of 1955, by the defendant carriers and the union, Oliver was under an enforceable

contract of lease of his personally owned automotive equipment with the defendants, A.C.E. and Interstate.

That particular Section 32 of the Carrier Union Contract, the court, upon reading, will find that it fixes and determines a minimum by which all lessors of equipment for the business of motor truck transportation in Ohio, and which contract is binding upon all carriers in Ohio, and constitutes an effective way of fixing the rates for the use of all leased equipment used in the motor truck industry in Ohio.

This contract is, in and of itself, according to our claim and the finding of the lower court, an agreement and combination which violates the provisions of 1331.01.

Now, on January 20, 1955, prior to the hearing in the court below, Judge Harvey granted a temporary injunction. The evidence from the record and the small additional amount of testimony which we desire to submit to Your Honors will show that Revel Oliver is a resident of this county, married, with a family, and has been in the trucking business for some twenty-three years. He operates and drives six tractors and four trailers of a value of approximately forty-five thousand dollars. He operated under leases to the A.C.E. and Interstate prior to the execution of the Central States contract.

Under his lease operation he pays his drivers, hires and pays his drivers, hires, and pays for their social security, unemployment insurance, furnishes the tires, oil, [fol. 244] gas and repairs; buys, pays for and holds the title to his equipment which he leases.

The defendant carriers, these two, A.C.E. and Interstate, are what are customarily known as common carriers. They are companies who, by virtue of permits issued by State and Federal authorities, are authorized to transport merchandise, tires and various commodities over the routes designated in their permits.

In the course of this operation, they own some of their own equipment, that is, their own tractors, trailers and trucks, and employ drivers of their own to operate these pieces of equipment. The equipment necessary to the operation of their business, not owned by them, is leased from the plaintiff and other individuals generally known

as owner-operators, and is essential to the carrying on of their business, and both are covered by the contract covering the period from February 1st, 1955, to 1961, and particularly by the Section 32 which we claim to be the obnoxious part of this operation.

Local 24 is a labor union, whose business agent is Kenneth Burke, and affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, of which Mr. Dave Beck is president, and James Hoffa one of its vice-presidents, both of whom are signatories to the agreement referred to in this proceeding.

In January of 1955 representatives of the Teamsters met with the representatives of private common and contract carriers of Ohio, and eleven other central states, in Chicago, [fol. 245] and entered into this contract of which we complain. At this conference the plaintiff and the owners of motor equipment leased to common carriers did not participate, and it is the making and enforcement of this contract that constitutes the violation of 1331.01 and tends to create a monopoly by fixing the price to be uniformly charged for the use of leased equipment. That is what we claim is the violation here.

Now, we wish to make it clear, Your Honor's, that plaintiff does not question the right of defendants to make a contract governing the wages, the hours, and the conditions of employment of the employees of these defendant carriers. We direct our attention to the provision of the contract which provides for a fixed rate per mile for all equipment owned and operated by this plaintiff and leased by him to carriers in Ohio.

These specific items are contained in Section 32, which is a separate, distinct, entire, separable provision which was entered into for the avowed purpose, gentlemen, of breaching plaintiff's existing leases, and for the purpose of fixing a uniform charge for the use of and the income from leased motor equipment, clearly distinct and distinguishable from the fixing of wages, hours and working conditions of the defendant carriers' employees.

Now, the enforcement of Section 32 against the plaintiff definitely violates our code; first, by fixing the minimum prices which the carrier must pay, and a minimum

charge which the owner must make for the use of his equip-
[fol. 246] ment; secondly, the contract, as Your Honors
will read this section, the contracts admitted into evidence
establishes prohibitive restrictions and penalties which
prevent the carriers from leasing and thus limits the num-
ber of pieces of equipment which may be placed in the
competitive market of transportation by motor vehicle
in Ohio.

This is not a labor dispute. We do not contest the right
of the union to represent the employees for collective bar-
gaining purposes, and to enter valid contracts covering
their employees regarding their wages, their hours, and
the improvement of their conditions. However, in our
case here is a plaintiff who creates capital, saves it, invests
it in motor trucks and equipment, which he owns, and
which he leases for a money consideration by way of per-
centage, tonnage on mileage, and we say he is not an em-
ployee, he is an independent contractor. The lease which
he has signed with the carriers declare on the face that
they are independent contractors.

While Your Honors, of course, must look into the box
as distinguished from the lable (sic) on it to judge its
contents, we feel certain the court below was correct and
that you will find from the evidence that we are an inde-
pendent contractor and, therefore, not an employee, and,
therefore, not subject to the National Labor Relations Act
which exempts independent contractors from their opera-
tion; and, further, that as an independent contractor the
union has no right to represent him, because they deal not
with the results of his income and his investments but with
[fol. 247] his conditions as a working person as refers
to hours and wages and his other conditions of employment.

We say the evidence will show that where competition
in the supply, or the price charged for the use of the equip-
ment is restrained or prevented, or if it tends to produce
this result of restraint, or if the free pursuit of any lawful
business by this plaintiff is restrained or restricted, that
that constitutes a clear violation of the Valentine Act of
Ohio, and that acts, conduct and contracts made in viola-
tion are subject to the injunctive orders of this court.

The evidence in this case will show that prior to January, 1955, plaintiff was engaged in the pursuit of a lawful business, that he owned and operated his tractors and trailers leased to the defendant carriers, and that the Central States Area Over-The-Road Agreement came on in January, 1955, making Ohio operations restrained by Section 32 thereof, which section deals only with owner-operators, as Your Honors will notice it. It is a separate subject in their contract.

This contract deals not merely with the rights of the union, the carrier and the employees, but by 32 it deals with the fixing of price for the use of equipment, personal property, as distinguished from the price of labor and thus interferes with the lawful pursuits of the plaintiff in a legal field in which neither carrier, union nor owner-operator have a right in which to engage to restrain it, and any agreement or combination between them, fixing or restricting [fol. 248] the price for use of equipment used in the business, is illegal and void under 1331.01.

Now, the contract in evidence speaks for itself. By its very words it condemns the defendants and establishes our claim of monopoly. It has uniform application throughout Ohio as the testimony in the transcript will show, and it covers and intends to cover all private common and contract carriers throughout Ohio, exclusive of railroads and bus lines. That is clear in the evidence. Its enforcement has already resulted in the elimination of owner-operators from the competitive field, as the evidence shows, a result which has been demanded by the Teamsters in public hearings on numerous occasions with the stock phrase "Owner-operators must go". The enforcement of these provisions places an unlawful restraint upon the plaintiff in the pursuit of his business, and requires him to pay for feather-bedding services for which he neither contracted nor which he desires, and which places an illegal burden upon his lawful pursuits.

Now, gentlemen, that is a review of the pleadings, the transcript below, the position of the plaintiff, and the statute on which we rely; the legal problems arising from such state of facts we will be glad to discuss with Your Honors by way of brief at such time as you designate.

Now, other than the transcript of the testimony in the lower court, Mr. Previant and I would like Your Honors to permit us to identify two letters, and those two letters, with our transcript, will complete Oliver's case.

[fol. 249] Judge Hunsicker: As soon as the opening statement of the defendant is made, why, you will present whatever evidence you have. You may proceed.

/ OPENING STATEMENT BY MR. PREVIAINT ON BEHALF OF
DEFENDANT-APPELLANTS

Mr. Previant: If the Court please, we don't propose to take a great deal of time in making our opening statement and discussing all of the evidence that has been adduced so far, and the legal arguments, but we believe to the proper understanding of the case it is imperative that certain things be nailed down to begin with, so that the Court may not be confused with any broad statements as to what the union is attempting to do here with its Article 32.

As Mr. Denlinger pointed out, Article 32 is a contract provision and labor union agreement which has wide-spread application through some thirteen states in this heartline of America, the Middle West. Similar provisions will be found in other union contracts involving the south, the east, and the west in other kinds of transportation.

We are actually dealing here with the labor union bargained out contract, which affects the great preponderant majority of the over-the-road and local truck driving operations in this country. We are not dealing with a local situation; we are not dealing with any private or separate agreement entered into locally between carriers and a union for the purpose of putting anybody out of business.

As the record will show, this particular article deals only with a particular type of a driver, but he is a truck driver. It does not deal with a fleet owner. It does not [fol. 250] deal (sic) an independent contractor. It deals with what is known under the contract and in the trade as an owner-operator or an owner-driver.

In the transportation industry you have different methods of operation. The most common, of course, is that in which the carrier owns his own pieces of equipment. The tractors

will supply the motor power, and the trailers which are the receptacles in which the commodities are placed for transportation. However, there are operations in which a carrier augments his own equipment.

When he has his own equipment, of course, he hires his own employees to drive that equipment and negotiates with the union for the purpose of establishing the wages, hours and working conditions under which that service will be performed.

Now, some carriers augment their equipment for reasons that are personal to them. Whether it is a matter of finances, flexibility of operation, or whatever it may be, some carriers, and as the record shows here initially, for the purpose of avoiding some of the legislation like social security, workmen's compensation, for the purpose of avoiding union wages this other system of transportation was evolved, and that was where, in addition to the equipment which the carrier owns—and I will use the terms here 'carrier' and 'employer' interchangeably as representative of those persons with whom the union negotiates and who are signators to this agreement—in those instances the employer or carrier, in addition to his own equipment, arranges for the lease of rental of additional [fol. 251] pieces of equipment, which is operated solely under his certificate. He leases this equipment from those who are not certificated as carriers and for those who are not licensed to, nor do they have the privilege under either State or Federal law to transport commodities as a business. These men own typically one piece of equipment. They go to the carrier, the carrier says, "I can use your equipment", either for overflow of freight or to serve a distant point. "I want to use your equipment and I want to hire you as the driver of that equipment" and they enter into a lease arrangement for that purpose. That is the owner-operator with whom Article 32 deals, and it is only with that type of person that Article 32 deals.

There may be fleet owners, as Mr. Oliver, and as other fleet owners in the service of this company, as the testimony shows, who have four or five pieces of power or tractors, who lease those four or five pieces of power or tractors to carriers.

Again, they themselves do not have the right nor the privilege to engage in the transportation business. All they can do is lease the equipment they own to somebody who is authorized to transport commodities. Now, that is the fleet owner. This contract has nothing to do with that man. It does not attempt to establish in any way the rates at which he will lease those other pieces of equipment to the carrier. We do not in any way tell him he must get so much a mile or so much percentage, or so much per ton. That is strictly a matter for negotiations between him as a [fol. 252] business man and between the holder of the certificates as a business man.

The fleet owner is affected in only one way: If that fleet owner, in addition to leasing equipment to a carrier or employer, determines that he himself wants to drive one of those pieces of equipment in the service of that carrier or employer, then he is a driver competing with our drivers, doing exactly what our drivers do, and in that instance Article 32 would apply, solely for the purpose of making sure that when the man who owns the piece of equipment drives that equipment as any other driver on the highway, he will get no less than the minimum wages, hours, and working conditions and guarantees which are established by our contract, because, obviously, if that driver, through subterfuge or otherwise, is going to get less than the rates and the conditions which are fixed by our contract, he is then destroying the standards which we have tried to establish in collective bargaining.

It would be very simple to comprehend that if a driver on company equipment is getting ten cents a mile, if that company hired a driver to drive his equipment for seven cents a mile, hire company equipment for seven cents a mile, that constitutes a direct and dangerous threat to our entire collective bargaining structure, the difference of three cents a mile. There would be no question that we could go to that employer and say, "Wait a minute, you have a contractual commitment here that people driving this equipment must get no less than ten cents a mile. You have no right, therefore, to put a man on this equipment for seven cents a mile."

[fol. 253] Now, what happens when the driver of the equipment happens to lease the equipment to the carrier. He has to establish a price at which he leases that equipment to the carrier. Supposing it has been established, as this record shows—although the figure I will use will be a hypothetical figure—that it cost him no less than ten cents a mile to operate that piece of power on the highways, taking into consideration the price he paid for it, the depreciation, the maintenance, the repairs, the tires, the gas, the oil, the insurance, and everything else that enters into that figure, it cost him ten cents a mile to operate his tractor on the highway.

Now, he goes to, let's say, A.C.E. and he says, "I will go on with you, give me seven cents a mile for the use of my tractor, and give me ten cents a mile for my services as a driver as required by union contract." Now, isn't that precisely the same situation as hiring that man independently to drive one of the A.C.E. pieces of equipment for seven cents a mile as wages, because although theoretically this man is getting ten cents a mile as a driver, if it costs him ten cents a mile to operate his equipment, and he has leased that equipment for seven cents a mile, he's got to, for every mile of travel, take three cents out of this wage pocket and put it into this equipment pocket so that he can operate that equipment. He is then operating for only seven cents a mile as a driver, thereby destroying the conditions which we have established, and this Article 32, as the contract shows, goes into a lot more than just [fol. 254] the mileage. There are many other guarantees and many other conditions in the contract for the driver. There is his holiday pay, there are his vacations, there are guarantees, there are all kinds of tolls and other things that are the obligation of the employer. Unless this owner-operator gets at least the cost of operation of his equipment when he drives, he is cutting the wage scales, the working conditions of all other drivers on the highway.

That is basically the theory behind Article 32. And again I must emphasize, we are talking only about the man who drives his own piece of equipment. Mr. Denlinger makes a broad statement here that we are trying to fix the price

at which Mr. Oliver leases all of his equipment. That is not the fact, and the record is clear. The contract is clear.

We fixed the price, if you may call it price fixing, we established a minimum for the use of equipment only when the owner is driving that equipment. In other words, when he is a driver, as an employee or as an independent contractor makes no difference. When he is a driver, competing with our drivers, a member of our union, operating on the highway with members of our union, either within the very company that he is dealing with or with other companies, competing in that fashion, we must be sure, in order to protect the wages of some forty to fifty thousand other employees covered by this contract, that that man gets the union wage, and we cannot be sure, if you please, that he gets that wage, unless we are sure that he is not having to take money out of his wage pocket and put it [fol. 255] in his equipment pocket.

Incidentally, if he can go in there, if the contract establishes a minimum of ten cents a mile, and he can go into the carrier and he says, "The contract says a minimum of ten cents a mile, I want twelve", that is his business, not ours. We do not attempt to negotiate a profit for him, we do not attempt to stop him if he wants to negotiate a profit for himself on the use of the equipment, all we say to the carrier is, "Don't you pay that man less than ten cents a mile, because, if you do, you are cutting his wages and you are violating our contract and you are destroying our standards."

In most instances in this area, testimony shows the minimum wage, the minimum rate, which is set in this contract, is a theoretical figure, because it is in fact and in experience a little less than the actual cost of operation, and for a carrier to hire the additional equipment, he is required, because of the competitive situation, to pay more than the minimum rate established by the contract, but we don't tell him to pay more.

We have never attempted to negotiate a profit for the owner-operator. All we have ever attempted to do is preserve his wages as a driver and his working conditions as a driver. He is the man who brings the tools of the trade with him. That is the way we look at it, and his tool is

worth so much, and if he has to use that tool at less than what it is worth, he is not then getting the journeyman's rate. It is a very simple proposition. It has been stated and [fol. 256] re-stated many times. The history of the article shows clearly that is its purpose. This article first found its way into the particular contract before this court in 1938. It has grown since that time. It has been negotiated in each annual, biannual, triannual negotiation; changes have been made to it, to keep up with the realities of the present day situation with respect to the use of that equipment. In many instances those negotiations resulted in improvements in that situation only over the very strenuous objection of the carriers with whom we negotiated.

I want to point out that in this State, it was only after a strike in 1952 that the operators in this State agreed to this kind of an article. They had a general statement in their preceding contracts. It was only after a strike in 1952 that they agreed to this article.

How can it be said that we have conspired or combined with carriers or employers to restrain trade competition or to fix prices when we have fought in the union's self interest for this kind of thing, and have finally gained it over the very vigorous opposition of the employers with whom we deal. We have never said, "The owner-operator must go." The Teamsters Union has never taken that position, either before the courts or before the Interstate Commerce Commission.

We have said the unregulated gypsy operator, the man who rides on the highway for twenty-four hours a day, paying no regard to the safety regulation of the I.C.C., with his office in his cap, with his bed on the side of the road. [fol. 257] We said that man must go. And we have been enjoined by the I.C.C. and by every respectable carrier group in the country in that fight, but never the owner-operator.

Both union and management have realized the flexibility of operation which comes from the privilege of being able to lease equipment to augment your own equipment. Nobody has ever objected to that. We have objected to the so-called gypsy.

We have represented these owner-operators for many years. We have continually improved their status. We have not in any way tried to drive them out of business. We are interested solely in protecting drivers. If that driver is an owner-operator, we will protect him. If that driver is a direct employee driving company equipment, we will protect him. We don't want to run anybody out of business. We have never tried to run anybody out of business. But, as I say, we have cooperated with State and Government regulatory agencies, and with responsible carrier groups, for the purpose of eliminating, to the extent that it is possible, to eliminate the so-called gypsy, the man who runs on what we call a trip lease in this business, who finds a carrier here, and he will run from the carrier here to New Orleans, find another carrier there, and run to California, find another carrier there, run from California to Denver, find another carrier there, then from Denver to Dallas, with no control, no regulation, with no regard at all for the safety provisions with the Interstate Commerce Commission; with no regard for the safety of the public, or for his own safety, a man who is caught in [fol. 258] some kind of an economic vice and has to keep that equipment operating, operating, operating, in order to make his payments.

Our basic theory then in this case is that we are opposed to the decreasing of a driver's wages and working conditions through any device, particularly under Article 32, through the device of paying to the man who drives his own equipment, and I must emphasize that. We don't care about any other piece of equipment, but the man who drives his own equipment must, in our opinion, and by agreement, get no less than the cost of operation of that equipment in order for him to get the driver's wages, and, as I say, if not, we are talking about what is an effective kick-back, he is actually kicking back a part of his wage to the employer if he takes less than the cost of operating his equipment.

One other point I suppose that should be made is that we are not, in this Article 32, controlling the transportation charges to the public. There is some suggestion here

that in doing this we are raising or controlling the price which A.C.E. may charge to a shipper. Now, that is not true. It is not our purpose, it is not our motive, and it has no more that effect than if you negotiated for the drivers of company equipment and said, "We want two cents more a mile." The employer said, "Well, if I give you two cents more a mile, I am going to have to go to the I.C.C., and I am going to have to get an increase in my tariffs for the particular commodities which I am licensed to handle." In that sense any labor union has to affect the price which the employer charges the public for the commodity which [fol. 259] the members of that union work on, but other than that, again since we are only protecting the wage of the driver, we are not in any way controlling the price which A.C.E. or any carrier who is authorized or licensed to sell transportation to the public gets for that transportation.

There is some question here as to whether these people are independent contractors or whether they are employees. That question was resolved against us by the lower court. We say it is immaterial; but we do point out, under this contract, they are employees. Under this contract we make them employees.

Now, this contract was never enforced with respect to A.C.E. for a very simple reason. When it was first negotiated in 1952 after a strike, we were restrained from enforcing it. When that restraining order was finally lifted, we were in the midst of negotiations for the 1955 contract. When the 1955 contract was executed, before A.C.E. complied with it, we were again restrained from enforcing it, but we do have a right, and this gets into a field that Mr. Knee is going to argue after the case is in, we do have a right under the National Labor Relations Act, to negotiate it, to establish an employee status for these people, and if we have that right under the National Labor Relations Act, then we challenge the right of a state court to say, "You can't do it". Now, that is the question of pre-emption. I am sure it is not new to this court. It is perhaps the liveliest subject in the entire field of labor and management today. [fol. 260] How far did Congress intend to go when it passed the Taft-Hartley Act? What area is left within which it states to operate?

Up to this point certain things are clear. Violence, things of that kind, the states surely have not been prevented from operating on, but when it comes to determining what he may bargain for, and whether or not the bargain you have entered into is a valid bargain, we say clearly that comes within the scope of a National Labor Relations Act, must be determined in the first instance by the National Labor Relations Board, and that would include the question as to whether or not a particular driver is an independent contractor or an employee. Those pre-emption arguments will be made at greater length subsequently.

I want to close this opening statement by again emphasizing that we are dealing here only with the man who owns and drives his own piece of equipment, while he is driving that equipment. We don't care what happens when somebody else is driving that equipment, but when a driver is operating a piece of equipment which he owns, we are interested in seeing to it that that driver does not destroy our wages and working conditions by taking a wage less than what other drivers get, and we say unless he gets the cost of operating that equipment, without a profit, unless he gets that cost, then surely he is operating in a manner destructive of the wages and the working conditions which we have established by collective bargaining.

Now, I believe that if that one point is kept in mind [fol. 261] in reviewing this record, and in listening to the argument subsequently, there can be no doubt that under the present interpretations of what is known as the Valentine Act, we have here a union negotiating in its own interest, without any purpose of entering into a combination with employers, to destroy or restrain competition, or to fix prices, and that operating in its own interest it has not in any manner violated the Valentine Act. Thank you.

Judge Hunsicker: What testimony do you wish to introduce, Mr. Denlinger?

Judge Doyle: Let me ask you one question: You have challenged the jurisdiction of this court, of course. You do that, do you, by an objection to all the evidence, or do you do it by pleadings or otherwise?

Mr. Previant: Initially the motion was filed in the lower court. It is done by pleadings, yes. The question is raised

by pleadings, and initially in the lower court a motion was filed challenging—challenge is a very harsh word—questioning the jurisdiction of the court in this kind of a case. That motion was overruled. For the purposes of this record, we would surely want to renew that motion at this point, if it is necessary. I am not sufficiently familiar with the procedure, but it is raised in the pleadings.

Judge Hunsicker: This is a new trial; this is a trial *de novo*.

Mr. Previant: Robert, I think at this time we better renew the motion as it appears in the record.

[fol. 262] Mr. Knee: I think so, too, Mr. Previant. I would like to say this, Your Honors, to reiterate what Mr. Previant has said, a motion was filed in the lower court and a separate jurisdictional brief was filed, a pre-trial brief, so His Honor could have it before the trial. Also the jurisdiction was raised by answer. We kept raising the question right straight through the case, and renewed the motion at the end. Now, if Your Honors feel at this time that we should make a motion—

Judge Hunsicker: If you will renew for the purposes of the record all of those motions, we will have them before us, in the consideration of the case.

Mr. Knee: Shall I do that now, if Your Honor please, orally?

Judge Hunsicker: I will assume he will object to the introduction of any evidence.

MOTION TO DISMISS AND OVERRULING THEREOF

Mr. Knee: If Your Honors please then, for the purpose of the record, and in this case *de novo*, on behalf of the defendant-appellants, that is, the Local Union 24 and Kenneth Burke, we make a motion on behalf of those defendant unions and their business representatives to dismiss the petition in this case for the reason that this court does not have jurisdiction over the issues upon which to render a substantive finding.

Judge Hunsicker: For the record at this time the motion will be overruled. We will, of course, pass on that subject at the conclusion.

[fol. 263] Mr. Denlinger: May I ask Your Honors, does the court wish to hear from Mr. Iden, who represents the carriers in this proceeding?

Judge Hunsicker: If he has any opening statement to make, I notice he is an appellee here.

Mr. Iden: I have been ignored through all the proceedings, even below.

Judge Hunsicker: I noticed you sitting in the front seat clear outside of the presence of the court almost, so I concluded that you were no longer interested in discussing the subject.

OPENING STATEMENT BY MR. IDEN ON
BEHALF OF A.C.E., APPELLEE

Mr. Iden: I moved back in. I don't have very much to state, but I think the court should be interested in the methods of contracting in this matter. These two defendants, the carriers, in company with, I think, every other interstate carrier in the state, if not all, almost all, joined in a power of attorney to a body to represent all of the Ohio carriers in these contract negotiations, and the Ohio body, in conjunction with similar committees of two, or thirteen other states, did the negotiating.

The power of attorney was such that once the contract was negotiated we were obliged to sign, and that is the method of arriving at this contract, so that at the time it was negotiated, we directly had no voice in the negotiations and were obliged to sign the contract, and that is how we got into it.

Insofar as our sympathies are with the plaintiffs, our [fol. 264] briefs will be in support of the plaintiff's position.

I think that while Mr. Previant may have stated that Mr. Denlinger's statements on the purpose and the results of Article 32 were too broad, I would add to that that Mr. Previant would narrow it too much.

The carriers that I represent feel that under the law they should have the right to enter into contract with independent contractors for the acquisition of equipment. We feel that this right carries with it the right to contract that this independent contractor shall furnish the drivers.

In this Article 32 there is a definite proscription against hiring trucks with drivers. This Article 32 provides that the lease of any equipment shall provide that these drivers shall be our employees, so to that extent, as well as many others, Article 32 controls the lease of equipment.

Judge Stevens: You mean except as the owner may be the driver of a piece of equipment?

Mr. Iden: It says that all drivers of this equipment must be employees of the carrier. We feel that our contract provides that these drivers of hired equipment shall be the employee of the owner of the equipment, and that if the union wants to protect the wage rates of those drivers, they should negotiate with their employer, and it is interesting to note that since this decision in the lower court, the union has instituted strikes against the owners of this equipment, and these strikes are now in progress.

There are also charges before the Board arising out of [fol. 265] their method of picketing, and that is the subject of a hearing which will be held in Akron starting March 4th by the National Labor Relations Board. So that the union has now requested of these fleet owners the right to bargain for their employees, we feel that is where the bargaining should be. We feel we have the right to make these contracts, which will require that the employees, the drivers of this hired equipment, will be the employees of the owners of that equipment.

Now, when he says that in their Article 32 they are only prescribing minimums, that they have a right to go over, that is fine. If they have the right to fix minimums, they have the right to fix any price. That minimum can be such that we cannot afford to hire any leased equipment. That will put the owner-operator, as such, out of business.

Insofar as rate making, the cost of our operations go into the national picture insofar as rate increases and the rates prescribed by the Interstate Commerce Commission, but I would say that would be a very minor result, because since the advent of motor carriers, the rates are more fixed by competitive factors between the various methods of transportation than by the actual cost as you do in a monopoly utility; with the advent of the trucking industry there isn't the monopoly in the transportation, so that those

old cost factors are more or less breaking down in rate making. But the rates that we charge are fixed by the Commission and by competition, so that if our cost of operations go up, we either go out of business or we change [fol. 266] our methods of operation, so that if these minimums for the leasing of outside equipment should go up to the point that we can no longer afford to operate within our fixed charges to the public, then that method goes out of the window, and that is a gradual thing that is going along in industry, that the owner-operator method of operation is going out of existence.

The use of owner-operators around Akron has been a traditional and historical method of operating motor carriers. The larger carriers started with the use of owner-operators, and many of these owner-operators prospered to the point where they now own carriers. They made more than they would have normally as truck drivers, in spite of what Mr. Previant says, that the purpose is to protect the owner-operators from starving and having the wages cut. For every owner-operator the union could produce, I doubt if they will produce any that went broke by reason of it, and I don't think the plaintiff is going to prove, on the other hand, the historical facts in Akron are that the owner-operators make more money than they would if just driving a truck.

On the other hand, the privilege and right of going into a private business carries with it the privilege of making a profit, and also the right to go broke. That, of course, has happened in certain instances, where people, through—

Judge Hunsicker: All of this is in the record before us, or do you intend to introduce additional testimony?

Mr. Iden: A great deal of it is in the record, and the inferences that I am talking about are in this record. I [fol. 267] am merely pointing out principally that what Mr. Previant has said about Mr. Denlinger's characterization of Article 32, that his is too narrow. That will be borne out by the briefs and by the evidence which will be before the court.

Judge Hunsicker: Now, you wish to introduce your transcript, plus two letters?

OFFERS IN EVIDENCE

Mr. Denlinger: At this time, Your Honor, we would like to offer the transcript of all of the evidence that was taken in the lower court, or tried before Judge Colopy as evidence in behalf of the appellee in this case. Do you have any objection to that? We offer the transcript.

Mr. Previant:—No.

Mr. Knee: No objection.

Mr. Denlinger: If we may ask Mr. Previant if he will identify two letters that we discussed prior to appearing before the court, identify them as the correspondents, the parties designated in the letter, and as having come from Mr. Burke and Mr. Knee, we would offer those letters, and that will complete our case.

Mr. Previant: We have here, Your Honor, our file copies. These are the only ones. We have not stipulated with Mr. Denlinger that these are either material or relevant to any of the issues before the court at this time. We told Mr. Demlinger we'd be glad to produce them for him if he desired to introduce them. Since they are file copies, and if the court should permit their introduction, we would prefer either the privilege of withdrawing them and sub-[fol. 268] stituting copies, or of reading them into the record.

Judge Hunsicker: Let's leave it this way: We will admit them, subject to your objection. If we find that they are improper, we will pass on that subject at the conclusion of the case. However, in any event, copies of these may be introduced, rather than the ones that you have from your file.

Mr. Previant: Let me just say briefly that this relates to a situation which occurred after the trial and decision and entry in the lower court, and prior to the hearing here, and we say that it has no relevancy or materiality at all, since it is something that has happened subsequent to that time.

Judge Hunsicker: Of course, this is a trial de novo, and additional evidence can be introduced, as a matter of fact, change of pleadings entirely. You can have a complete change of pleadings from what you had in the trial court.

Mr. Previant: How do we identify these, Your Honor, as new exhibits?

Judge Hunsicker: Court of Appeals Exhibits 1, 2, and 3. I see three papers there.

Mr. Denlinger: This will be fine, Dave. If Your Honors please, I would like to offer in evidence in behalf of the Appellee, Revel Oliver, Court of Appeals Exhibits 1, Exhibit 2 and Exhibit 3.

The Court: Admitted, subject to the objection and the final passing upon the evidence.

(Court of Appeals Exhibits 1, 2, and 3 admitted, subject to above.)

[fol. 269] Mr. Previant: The record does show our objection to the materiality and relevancy of this?

Judge Hunsicker: Yes, and we will pass on that subject.

Mr. Denlinger: Appellee rests, Your Honor.

Judge Hunsicker: I am going to suspend for a few minutes; as Mr. Knee knows, I have a couple of smoking partners.

RECESS

Judge Hunsicker: You have rested, and you have some testimony?

Mr. Previant: We have some testimony, Your Honor. With your leave, we would like to present it now.

Judge Hunsicker: Call your first witness.

JAMES R. HOFFA, being first duly sworn, testified as follows:

Direct examination.

By Mr. Previant:

Q. Will you please state your name and business address?

A. James R. Hoffa, H-o-f-f-a, 2741 Trumbull, Detroit, Michigan.

Q. What is your business, Mr. Hoffa?

A. I am President of Local Union 299, Chairman of the Central Conference of Teamsters, and Vice-President of the International Union, with various other titles, but those are the principal ones.

Q. All of these are affiliates of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and [fol. 270] Helpers of America?

A. That is correct.

Q. And how long have you held official positions with these various organizations, Mr. Hoffa, starting from your first official position with any labor organization?

A. This is my 25th year.

Q. During that time, Mr. Hoffa, have you participated to any degree in the negotiation of labor agreements covering over-the-road trucking operations?

A. Since 1934.

Q. In what capacity have you participated in those negotiations?

A. As president of my own local union, 299, and in 1937 participated in the area-wide bargaining for the over-the-road contract.

Q. And the over-the-road contract that is referred to is in evidence here, I believe, as Exhibit 1—are the exhibits here?

Judge Hunsicker: We may have them attached to these.

Mr. Knee: I think they are, Your Honor.

Judge Hunsicker: Unless it is attached to the Bill of Exceptions, or the transcript of testimony.

Mr. Previant: It is Exhibit 1.

Judge Hunsicker: There are four or five here. My recollection was that it was Exhibit 1. That is the one in which Article 32 is contained?

Mr. Knee: Yes.

Judge Hunsicker: It is Exhibit 1 in the trial court.

Judge Doyle: Let's be certain. Where is it? Is it in the [fol. 271] Bill of Exceptions?

Mr. Previant: It is not in the copy we have, Your Honor. There are just blank pages to which they should have been attached.

Judge Doyle: Maybe it is attached to the petition, is it, or answer?

Mr. Knee: It is not attached to the petition.

Judge Stevens: Article 32 is carried into the opinion of the trial court, and also into the journal entry.

Judge Doyle: We want the entire contract before us. That is something you should do to complete that record then, is get the copy of the entire contract.

Judge Hunsicker: I don't find it in here.

By Mr. Previant:

Q. In any event when you refer to the over-the-road agreement, Mr. Hoffa, you are talking about what has been offered here as Exhibit 1, entitled Central States Area Over-The-Road Motor Freight Agreement with Ohio Rider?

A. That is correct.

Q. You are familiar with that document?

A. That is correct.

Judge Stevens: Gentlemen, if that isn't attached to the transcript of the testimony here, it is doubtless in the hands of the court reporter.

Mr. Knee: May it please Your Honor, I am looking at the transcript, and the motor freight-agreement was introduced, and it so states. Now, would Your Honors like us to introduce a copy here? If so, we can produce one.

[fol. 272] Judge Doyle: Just attach it to whatever transcript you have introduced in our record. I see you have several copies of it.

Mr. Knee: Yes, but they are not fresh copies, Judge. They have been marked up.

Mr. Laybourne: If the Court please, Mr. Iden would be glad to get the court reporter that took the record in Judge Colopy's court. I know he has the exhibits in his possession.

Judge Stevens: Undoubtedly that exhibit is there then.

Judge Hunsicker: You can go ahead and get them and bring them down.

By Mr. Previant:

Q. In addition there were a number of other exhibits introduced from 17 to 21 that also were a series of over-the-road contracts starting with 1938, I believe; you are familiar with those contracts, Mr. Hoffa?

A. That is correct.

Q. Those are the contracts, the negotiations of which you participated in?

A. That is correct.

Q. More recently, what was your capacity in those negotiations?

A. In 1955, I acted as a chairman of the negotiating committee for the current contract.

Q. All right; and preceding the 1955 contract, I call your attention specifically to the 1952 contract, were you at that time chairman of the negotiating committee?

A. Yes, I was.

[fol. 273] Q. You have been chairman of the negotiating committee for approximately ten years now, have you not?

A. 1939.

Q. Since 1939?

A. That is correct.

Q. I assume also, Mr. Hoffa, then, you are familiar with the provisions of Article 32 of the current agreement, and in its various forms in which it appeared in the earlier agreements?

A. Yes.

Q. Did you actively participate in the negotiation of that article?

A. Yes, I did.

Q. Will you state, Mr. Hoffa, the background for the original appearance of that provision in the labor agreement?

Mr. Denlinger: Object.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Hunsicker: Well, I will sustain the objection. You may have your exception.

Mr. Previant: I want to point out to Your Honor that

Mr. Blunden, over the same objection in the lower court, was permitted to go into that. He was one of our witnesses, too, and I merely wanted to point out that—

Judge Hunsicker: It would be repetitious of what you have in the trial court.

Mr. Previant: We are going to try to shorten it up, but I would like to be heard just a moment on it. The purpose of the testimony, Your Honor, is to show that the motivations for this agreement were purely in the self-interests of the union and its members, and not for the purpose of entering into any combination with employers or any other group to violate any anti-trust laws, or any [fol. 274] thing else, and we believe that motivation under the current decisions and interpretations of the Valentine Act is an important consideration in determining whether or not the principal object of a particular agreement was to restrain competition or to fix prices, or whether there might have incidentally been that effect, where the principal object, however, was something entirely different.

Judge Hunsicker: I don't get the same interpretation out of the Valentine Act as you do, but I will consult with my associates.

The majority of the court feel that it should not be admitted.

Judge Doyle: May I make a statement then. If your statement is correct, that in the interpretation of the Valentine Act motivation is a legal question, I think your evidence should be admitted. I don't know that motivation is a thing to be considered in interpreting the Valentine Act. If it is, the evidence would be proper, but otherwise not.

Mr. Denlinger: If Your Honors please, I think we can quickly give you authorities that intent or motivation is not a factor in the restraint of trade. It may be of the best intentions; it is the effect or the tendency of what the restraint might do that creates the problem.

Judge Stevens: In other words, we are called upon to determine what do the provisions of the contract provide?

Mr. Denlinger: That is right.

Judge Doyle: I am correcting the statement of counsel

as being a correct statement of law. Of course, that is sub-[fol. 275] ject to later consideration.

Judge Hunsicker: We already have this testimony in before us.

Mr. Previant: I do want to call to the attention of the Court the statement appearing in the case of Lipman & Sons versus Painters, 63 Ohio Appeals 157, 25 Northeast 2nd, 853, in which the Court had before it the application of the Valentine Act, too, a labor matter, in which the Court said, "The statute is now construed according to the 'rule of reason' and to prohibit combinations that are intended to directly restrain trade or commerce, or which necessarily have that effect, and exclude from the operation of the statute combinations for another and lawful purpose which only incidentally and indirectly impose such restraint. Such is the character of the restraint upon trade or commerce of this association of employees."

It is with that in mind, Your Honor, that we thought it would be material to point out the evils which the negotiators, at least on the union side, sought to correct by the negotiations of Article 32. There may be some quarrel with whether or not the result of that negotiation actually met the evil or did something which was evil in itself, but we thought that under that, and under the decision of the Ohio Supreme Court in List versus Burley Tobacco Growers, which first followed the U. S. Supreme Court decisions in adopting a rule of reason in the application of your Valentine Act.

This kind of background would be helpful to the Court in coming to its final decision as to whether or not this is a [fol. 276] combination, or conspiracy, or contract in restraint of trade, or fixed prices, or whether those only incidentally flow from what is a legitimately brought objective.

Judge Hunsicker: You may have your exceptions.

Mr. Previant: I wonder if you would read the question to which the objection was made.

(Thereupon, the reporter read the question as follows: "Will you state, Mr. Hoffa, the background for the original appearance of that provision in the labor agreement?")

Mr. Previant: If the Court please, I am not going to try to avoid or evade the ruling, but there are a number of questions which may appear to be of the same import, but which the Court may find not subject to objections, and I would like to ask those questions.

Judge Hunsicker: Go ahead.

By Mr. Previant:

Q. Mr. Hoffa, were there any specific evils in the trucking industry which the union negotiators sought to correct in the negotiations of this contract?

A. Yes. During the period of the first contract, we found that the employers, in an attempt to circumvent the actual wages that had been—

Mr. Denlinger: We object.

Judge Hunsicker: The answer was "yes".

Q. Will you state what those evils were, Mr. Hoffa?

Mr. Denlinger: Object to that.

Judge Doyle: If the objection to the first question was properly sustained, this goes along with that. As I said [fol. 277] before, I repeat what I did say in respect to the first question.

Q. Was the purpose of the section or the article to correct specific evils?

A. Yes.

Q. Did you have any difficulties in the negotiation of the contract of this particular article in getting its acceptance by the employers?

Mr. Denlinger: Object to that.

Judge Hunsicker: He can answer that yes or no.

A. Yes, we did.

Q. Were there any strikes which were called by the union for the purpose of requiring employers to agree to a contract containing this provision?

A. Yes.

Q. Was there some such strike in the State of Ohio?

A. Yes.

Q. Do you recall when that was?

A. 1952.

Q. Was this contract negotiated ever for the benefit of any specific employer or group of employers, having in mind Article 32? Was Article 32 of the contract ever negotiated for the benefit of any individual or specific group of employees?

A. Nothing to do with employers whatsoever.

Judge Stevens: Your answer is "no" then.

Q. Mr. Hoffa, has the union ever tried to negotiate a profit for an owner-operator in the leasing of his equipment to the employer, where he is going to be the driver of that equipment?

Mr. Denlinger: Object to that.

A. No.

Judge Hunsicker: The answer may stand as "no".

[fol. 278] Q. Section 12-b of the Article 32, Mr. Hoffa, sets forth minimum rates for leased equipment owned and driven by the owner-driver; are you familiar with that?

A. Yes, sir.

Q. Can you state how those minimum rates were arrived at?

Mr. Denlinger: Object to that.

Judge Hunsicker: You may answer.

A. There was quite a session of business agents to determine the best way to arrive at the rates where they could not be questioned by the employers we were negotiating, so we contacted the manufacturers of trucks to determine what they considered the paramount cost of operating a piece of equipment. We also contacted dealers who sold trucks to individuals and to companies to determine what they considered was the proper cost structure for various types of pieces of equipment. We also contacted trailer manufacturing companies for the rate per mile that they determined in their sales discussions with companies and individuals as to the actual cost of operating the equip-

ment. We also called in members of our organization and took thirty days' actual cost records that they maintained for their equipment, without including the wage in it, but just the bare maintenance of the equipment operation, to determine whether or not the rate structure we were suggesting was the actual cost of operation.

Q. Do you know, of your own knowledge, Mr. Hoffa, whether the employer's side of the bargaining table entered into the same kind of studies?

[fol. 279] A. Yes, they did. They produced figures in some instance contrary to the ones that we suggested, and finally, after being able to prevail upon them and disproving their figures, they finally agreed to the ones that we had.

Q. And again you say that those figures were designed to represent, as far as you could ascertain, the cost of operation of the equipment, and nothing more?

A. Yes.

Q. Mr. Hoffa, in your present capacity, do you have the opportunity to familiarize yourself with the minimum rates or lease rates which are presently being paid in this area to the owner-operators of their own equipment?

A. I am familiar with them, yes.

Q. Can you state whether or not the rates which are actually being paid to the people who own and drive their own equipment, are higher than or at the same level of the contract rates?

A. I know of no company paying the bare minimums of our contract.

Judge Hunsicker: You mean by that, they pay higher?

The Witness: Yes, sir.

Q. Mr. Hoffa, the testimony here with respect to the plaintiff is that he owns four pieces of power equipment or tractors, and six trailers, that those tractors and trailers are usually operated by persons whom he hires, that he himself operates that equipment very infrequently or irregular, sometimes wholly on intra-city basis to take the piece of equipment from a terminal to the repair shop; will you state whether or not that kind of an owner-operator is a

[fol. 280] common type of an owner-operator, operating in the area covered by this contract?

A. He is not.

Q. What is the common type of owner-operator in the area covered by this contract, the typical one?

A. A man who owns and drives his own individual piece of equipment.

Q. A single piece of equipment?

A. That is correct.

Q. Will you state whether or not this article was designed primarily for the person you have just described?

A. Very clearly indicates, in the very opening section, that it only applies to the driver-owner of the piece of equipment.

Q. Do you know, of your own knowledge, Mr. Hoffa, whether a similar contract provision, or provisions are found in other area contracts covering over-the-road trucking operations?

A. Yes, they are.

Mr. Denlinger: Object to that.

Judge Hunsicker: The answer may stand.

Q. Will you state in what areas they are found?

A. Southeast, southwest, commonly known as the Southern Conference, and the Carolinas, Virginia, to my knowledge they have similar provisions.

Q. How many states are covered by the contracts negotiated by the Southern Conference of Teamsters?

A. Ten states.

Q. How many states are covered by this contract, Mr. Hoffa?

A. Twelve states.

Judge Hunsicker: Twelve?

The Witness: Yes, sir.

[fol. 281] Judge Hunsicker: Midwestern states?

The Witness: Yes, sir, the middle west and the south.

Q. That, of course, includes this state, the State of Ohio?

A. Yes, sir.

Mr. Previant: If the Court please, again I would like one bit of clarification on the initial ruling. It had been my intention to have Mr. Hoffa pick out sections of this article and to describe the purpose of such section, or the evil which they were seeking to meet, and they were seeking to accomplish, if not an evil to meet and then to accomplish, again in our belief that this would be material in the application of an anti-trust act to a labor contract. If the ruling of the Court, made and reiterated, would preclude me from doing so, I would not do so. I am just asking as a matter of information.

Judge Hunsicker: In my opinion I think it would be just asking in another way the first question that was objected to and the objection sustained.

Judge Stevens: That is right.

Mr. Previant: I understand then that it will be subject to the same objection?

Judge Hunsicker: Yes.

Judge Doyle: Of course, testimony of this kind, if it is later determined not to be relevant or proper, it would be disregarded and extracted by the court upon the consideration of the case. I am assuming that the statement of counsel is correct in his interpretation of the law that [fol. 282] regulated the Valentine Act, and I don't know; I have no knowledge of that. I'd have to look it up.

Q. Mr. Hoffa, can you give an example of how a failure to pay the minimum equipment piece rates set forth in Article 32 will actually effect a reduction of the wages of the driver who is driving his own equipment and receiving less than such rates?

Mr. Denlinger: Object to that.

Judge Hunsicker: Since I mentioned the matter of—

Mr. Denlinger: Pure speculation.

Judge Hunsicker: Of course it is speculation, but also it is a matter of argument. Just a moment, please.

Mr. Previant: I am told by my co-counsel—

Judge Hunsicker: We have sustained the objection, but go ahead.

Mr. Previant: I am told by my co-counsel that under

the procedure here we may make a proffer with respect to the matters on which objection has been sustained.

Judge Hunsicker: Yes.

Mr. Previant: Our proffer is this, that if we were permitted to ask the questions, and if the witness were permitted to answer the questions along the lines already indicated, the evidence would be that the owner-operator type of operation in the motor carrier industry arose out of the desire of motor carriers to avoid certain social legislation such as the Waggner (sic) Act, the Social Security Act, the Workmen's Compensation Act, the Unemployment Compensation Act, and State acts of similar [fol. 283] import, as well as to avoid the payment of union wages, hours, and working conditions for drivers of equipment on the streets and highways of this country. That the various sections of Article 32 each were designed to eliminate the unfair competition which resulted from the device of hiring equipment, or from the device of selling a piece of equipment to an employer for one dollar, attempting at that time even to confer upon that employee a so-called independent contractor's status, and then to pay him in lump sum for his services and the use of the equipment, in that way avoiding, as I say, the obligation of these various laws, and more particularly insofar as this organization is concerned, avoiding the payment of negotiated wages, hours, and working conditions for drivers of similar equipment, traveling the same highways, and carrying the same commodities. The purposes of the article are set forth in a number of places by the negotiators themselves, and the testimony which we proffer, which would be in support of such purposes, for example we refer to the statement that the minimum rates are not intended to—the statement that the parties have not intended to negotiate a profit for the owner-driver, the statement appearing in Section 16, and in all of Section 16, as to the purpose and intent of the clause, the various regulatory provisions which appear in this article were all designed at the particular time which they found their way into the article to meet a specific evil, again to accomplish the sole purpose of protecting the wages, hours,

and working conditions of drivers of equipment on the [fol. 284] streets and highways of this country. If Mr. Hoffa were permitted to answer the questions which we had proposed to put to him, he would have in essence answered as I have indicated.

We have no further questions of Mr. Hoffa.

Judge Stevens: May I ask this question? The proffer which you have just made is all covered by the notes to your Exhibit 1 here, is it not?

Mr. Previant: In some instances, Your Honor, they are, but the background of the negotiation of the article may be indicated in the notes, but surely never fully explained. I mean, the specific condition which the negotiators tried to solve when they met is not set forth in the article, except as you might infer from some of the provisions of the article what that specific condition was.

Judge Hunsicker: Any cross examination?

Mr. Denlinger: Just a few questions, Your Honor.

Cross examination.

By Mr. Denlinger:

Q. Mr. Hoffa, do I understand from your previous answers that Article 32 of the over-the-road agreement with Ohio Rider was brought into existence by a strike on the part of your union?

A. Well, it was not. It was brought into existence by negotiations.

Q. Didn't you say that there was a strike before this article became a part of the agreement?

A. Yes, because the em—

Q. How long did that strike last?

A. I think a matter of days.

[fol. 285] Q. How many days?

A. I think less than a week.

Q. And it was then the pressure and force of the strike upon the employers of Ohio that brought about Article 31?

A. That is not true.

Q. Well, what is true?

A. The Ohio companies negotiated with the unions for the acceptance of the contract, and then it had been negotiated by the negotiating committee, the operators in Ohio who had sent the negotiating committee in, repudiated their negotiators.

Q. And you called the strike then to force the employers of Ohio to sign?

A. We have called a strike to force the employers to agree to what their negotiating committee had said they had the power of attorney to agree to in behalf of the carriers.

Q. That is Article 32 as it now appears in the contract?

A. That is correct.

Q. Do you know who the owner-operators are at Interstate?

A. Do I know who they are, as individuals, you mean?

Q. Do you?

A. Well, I don't know what you are talking about.

Q. Do you know how many owner-operators there are at Interstate?

A. Interstate what?

Q. The defendant in this case.

Judge Hunsicker: What is the full corporate name?

Mr. Denlinger: Interstate Trucking Company.

Q. Are you familiar with who the defendants are in [fol. 286] this case, Mr. Hoffa?

A. Yes.

Q. Who are they?

A. It is Oliver, who is——

Q. Defendants I am talking about.

A. Local 24.

Q. Who else?

A. And its members.

Q. And who else?

A. As far as I know of, that is it.

Q. Do you know Mr. Burke is a defendant?

A. Yes, and also he is an officer of the union.

Q. Do you know that A.C.E. Transportation Company is a defendant?

A. I understand that.

Q. Do you know that Interstate Trucking Service is a defendant?

A. No, I did not.

Q. Do you know how many owner-operators there are at the A.C.E. Transportation Company?

A. No, I do not.

Q. You stated a while ago that you were familiar with owner-operator operations in Akron, do you remember that?

A. Yes, and I say that I am right at this moment, yes.

Q. How many operators are there at A.C.E.?

A. I have no knowledge because that was not the question put to me.

Q. You testified that in arriving at rates to be considered in the minimum provisions of Article 32 that you made quite an investigation?

A. That is correct.

Q. Did you call in any owner-operator?

A. Yes.

Q. What owner-operator in Ohio did you call in? Name one.

A. I do not recall the names of owner-operators who were called in, because the information was secured by the local—individual local unions and sent to the negotiating committee. We can, if necessary, secure those names for you, yes.

Q. Did you call in any owner-operators from Akron?

A. As I told you, the local unions collected the information and sent it to our negotiating committee.

Q. Do you know of any owner-operators in Akron that were called in?

A. Of my own knowledge, no, but—

Q. Can you tell this court one transportation company in Ohio that has owner-operators that furnished any information regarding owner-operators?

A. At this particular moment I can't, but I had been—

Mr. Denlinger: That is all; thank you. Just a minute.

By Mr. Denlinger:

Q. There are no owner-operators clauses in the East, are there?

A. Yes, there is.

Q. In what states?

A. In the State of Philadelphia, Pennsylvania.

Q. What other state besides Philadelphia?

A. In Pennsylvania and in Philadelphia local unions in Pennsylvania, and in other local unions in the East, which I do not have at this moment, but can produce the contracts, if you care to see them.

Q. Well, you don't have any combined states joining in contracts similar to the one in issue here, in Pennsylvania, New York, Virginia, or any of the eastern states, do you?

A. Well, that certainly isn't true. In Virginia we have a similar contract to this.

Q. Do you have any over-the-road area contracts in [fol. 288] the eastern states?

A. Yes, we do. We have all the New England local unions under contract.

Q. Do they contain Article 32?

A. They have an owner-operator provision in their contract.

Q. Not similar to this, though, is it?

A. The draft is similar to this, yes.

Q. Not with the restrictions of this article, is there?

A. Similar to this.

Mr. Denlinger: I think that is all.

Redirect examination.

By Mr. Previant:

Q. Mr. Hoffa, the strike in Ohio in 1952, were there other issues besides the Article 32 issue?

A. Question of wages and conditions.

Q. Article 32 together with the wages and conditions?

A. Contract as a whole.

Mr. Previant: That is all.

Judge Hunsicker: You may step down. Pardon me, Mr. Iden, do you want to ask any questions?

Mr. Iden: No, sir.

(Witness excused.)

Mr. Previant: We have another witness under subpoena. May Mr. Hoffa leave at this time, Your Honor?

Judge Hunsicker: Yes, certainly.

HARLEY C. HARTLINE, being first duly sworn, testified as follows:

Direct examination.

By Mr. Previant:

Q. Will you please state your name and business address?
[fol. 289] A. Harley C. Hartline, 395 Baird Street, Akron, Ohio.

Q. What is your occupation, Mr. Hartline?

A. Trucking.

Q. Do you or did you hold any position with any trucking company?

A. Yes, sir.

Q. What company is that?

A. A.C.E. Transportation Company.

Q. Where is that company located?

A. 395 Baird Street.

Q. What capacity did you have at that company?

A. President.

Q. Are you still the president of that company?

A. I am secretary of the board as of now.

Q. As of when?

A. Now, February 15, 1957.

Q. That is a corporation?

A. Yes, it is.

Q. What kind of premises do you maintain in the City of Akron?

A. What kind of premises?

Q. What kind of premises?

A. We have a dock, garage and office.

Q. Do you own any equipment?

A. Yes, we do.

Q. What kind of equipment?

A. Tractors and trailers.

Q. When you say tractors, you are describing motor equipment for the hauling of freight?

A. Yes.

Q. When you say trailers, you are describing equipment in which the freight is hauled?

A. That is correct.

Q. How many tractors do you own, Mr. Hartline?

[fol. 290] A. Approximately one hundred sixty.

Q. How many trailers do you own?

A. About two hundred fifty.

Q. You have a certificate from the Interstate Commerce Commission?

A. We do.

Q. You have a certificate from the Ohio Public Utilities Commission, is that right?

A. Yes, we do.

Q. To what points do you haul under your I.C.C. certificate?

A. We haul into the eastern territory, Wisconsin, New York, Connecticut, Rhode Island, and Massachusetts.

Q. New Jersey?

A. New Jersey, yes.

Q. You have terminals in those cities?

A. Yes, we do.

Q. You haul freight between Akron and those terminals, and between those terminals?

A. Between Akron, Cleveland, and those terminals.

Q. You have another terminal in Cleveland then?

A. Yes, that is correct.

Q. I understand that you do a business in excess of five million dollars a year, is that right?

A. That is correct.

Q. Do you employ any drivers to operate your equipment?

A. Yes, we do.

Q. And approximately how many drivers do you have driving your own equipment?

A. Are you talking about road drivers now, or—

Q. Road drivers.

A. Road drivers? Well, it varies between twenty and [fol. 291] thirty.

Q. And how many pieces of equipment do you lease for your road hauls?

A. Approximately nine.

Judge Stevens: Did you say ninety or nine?

The Witness: Ninety.

Q. That equipment is supplied to you by those who own more than one piece of equipment and lease the equipment to you, is that right, fleet owners?

A. Some of them on one piece, and some on more than one piece.

Q. You have a collective bargaining agreement with Teamsters union local 24 which has been identified here as Exhibit 1?

A. We do.

Q. Are you familiar with the proceedings before the I.C.C. Commission, known as MC-43, Mr. Hartline?

Mr. Denlinger: Object.

Judge Hunsicker: Not knowing what MC-43 is, I probably ought to just ask—tell him to go ahead and answer and see what it produces. You may answer.

A. I am fairly familiar with it, yes.

Q. Do you want to describe that proceeding for the benefit of the Court?

Mr. Denlinger: Object to that.

Judge Hunsicker: He may answer. You don't want to keep the Court from being informed.

Mr. Denlinger: No. I am objecting on the irrelevancy of the question, Your Honor.

Judge Hunsicker: Of course, that is one of the first [fol. 292] things we are going to have to decide here. You may proceed.

A. In other words, you want me to tell the court what the MC-43 does, is that right?

Q. I think that would be quite a burden actually, because I doubt that lawyers could do that adequately. Let me ask you this: Are you familiar with the fact that under MC-43 a carrier such as yourself is required to exercise full control and supervision over all of the vehicles that operate under your certificate?

A. So far as I.C.C. regulation is concerned, yes.

Q. In the dispatch of drivers from your terminal, Mr. Hartline, do you use the first in first out rule?

A. Yes, we do.

Q. That means that regardless of whether they are company payroll drivers or drivers of leased equipment, they are dispatched in the order of their return to the Akron terminal?

A. That is correct.

Q. When you lease equipment from the owners of the equipment; are they painted in the distinctive colors that characterize your company's operations?

A. Well, we don't require them to have a certain color so far as the piece of equipment is concerned. We require them to have our lettering on their equipment.

Q. Most of them, yellow lettering?

A. That is correct.

Q. Green with yellow lettering, I guess, is the color combination, isn't that true?

A. That is true.

[fol. 293] Q. It is your name, the A.C.E. Transportation Company, that appears on the company's trucks that you are talking about?

A. That is correct.

Q. When equipment is dispatched from your terminal, regardless of whether it is equipment which you own, or equipment which you lease from others, it is loaded on your premises, is that right?

A. Not in all cases it isn't. Might be picked up at a shipper's platform.

Q. Loaded at the shipper's docks, to which you send the driver for that purpose, is that correct?

A. That is correct.

Q. Loaded on your premises by your employees?

A. That is right.

Q. Then they are dispatched from your dispatcher?

A. That is correct.

Q. They are sent either to your other terminals which you have described here, or direct to the consignees, is that correct?

A. That is right.

Q. They are checked on the road by your insurance carrier?

A. That is correct.

Q. There are check points along the way, on the highways, at which they must check as they proceed on the highways?

A. That is correct.

Q. They are checked upon arrival at your terminals by your employees?

A. Yes.

Q. They must report to that terminal when they arrive?

A. Yes, sir.

[fol. 294] Q. They receive their further orders and dispatches from that away from home terminal, is that right?

A. That is right.

Q. And they get those from your employees?

A. That is right.

Q. When they return, they return to your terminal here in Akron?

A. Yes, sir.

Q. At which time they again report to your employees here?

A. Yes, sir.

Q. And turn over to them their bills?

A. That is correct.

Q. Turn over to them their logs?

A. That is right.

Q. They are unloaded by your employees at your terminal here?

A. Yes, sir.

Q. The equipment is inspected here by your employees?

A. That is correct.

Q. And this is regardless of whether it is equipment which you own, equipment which you lease?

A. That is right. That is a requirement of the I.C.C.

Q. It would be a fair summary then, Mr. Hartline, to say that all drivers, company drivers and owner-operators, engage in the same operations we have described here in your service, is that right?

A. That is correct, yes.

Q. Now, I understood from the opening statement made from your counsel today that you had given a power of attorney to a negotiating group in the negotiation of 1952 and 1955 contracts, is that right?

A. That is correct, we did that.

[fol. 295] Q. Immediately after the negotiation of those contracts—of the 1952 contract, Mr. Hartline, you were restrained by court order from putting that contract into effect, insofar as Article 32 was concerned, is that right?

A. That is correct.

Q. Subsequently that court order was dissolved, is that right?

A. Yes, sir.

Q. Shortly after the dissolution of the court order the 1955 contract was negotiated, is that right?

A. That is correct.

Q. Again you were represented in those negotiations through the power of attorney given to an employer's group here, is that right?

A. That is right.

Q. Before you could execute the 1955 contract, you were again restrained from enforcing Article 32 of that contract?

A. That is right.

Q. Or did you actually sign the contract and were then restrained from enforcing Article 32 of the contract, which was it, Mr. Hartline?

A. I don't remember; I don't remember.

Mr. Previant: As a matter of fact, I think the signed contracts are in evidence here.

Mr. Knee: Yes, they are.

Q. So you had executed the agreements, but application of Article 32 in each instance had been restrained by order of the court, is that correct?

A. That is correct.

Mr. Previant: That is all.

[fol. 296] Mr. Denlinger: No examination, Your Honor.

Judge Hunsicker: All right, you may step down. Anything further?

Mr. Previant: We rest, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Hunsicker: I assume there is no rebuttal, because there is nothing new to rebut here. Now, gentlemen, we come to that point in this matter where we have oral argument. However, I am going to discourage oral argument, although I will not prevent it, because under the law I have no right to prevent it. But this is a matter that is going to take considerable amount of study. The preference of the Court is that you submit rather extended and extensive briefs. I assume that you have gotten along the way to preparing them.

Mr. Knee: Yes, we have.

Judge Hunsicker: I certainly don't want to keep you from speaking, Mr. Knee, having come up from down in Dayton, Ohio. We would much prefer if you would submit by way of written argument, because it is going to be a little while—we will hear the oral argument today, then it is going to be maybe forty-five days before we have all the briefs in. The result is, we are going to—we are hearing a number of other cases, and we are going to forget what you said, yet we will have before us the written briefs. I am merely making that suggestion.

Mr. Denlinger: In behalf of appellee, we hereby waive argument, irrespective of what appellant wishes to do.

Mr. Knee: If Your Honor please, Mr. Previant and I [fol. 297] were talking this morning, that is, irrespective of the fact that I came from Dayton, to help participate in this trial, but Mr. Previant and I were talking this morning just before court convened, and in the lower court on this matter we offered oral argument, of course,

and the court indicated that he didn't care to hear it, that we should file briefs, and we were just discussing that back and forth, and because of the fact that both of us believe that this is a matter of some importance, and that there is a way that we might—I mean, might convey to the Court our feeling about this, that the written page probably couldn't express. Now, if Your Honors want to see it, we would like to argue orally, not to belabor the point too much, but things that probably a written page wouldn't or couldn't set forth, Your Honor, and we would like to argue orally, particularly the jurisdiction, and Your Honors could have the oral argument at the time we submit briefs or just as Your Honors would like, but we would like to present to the court argument.

Judge Hunsicker: We will hear argument this afternoon then. Have you any idea how long?

Mr. Knee: As far as we are concerned, I don't think we would consume over forty-five minutes probably, is that right, Mr. Previat?

Mr. Previat: We surely would feel impelled to make the argument as pithy as possible.

Judge Hunsicker: All right, 1:30 this afternoon.

Mr. Knee: Your Honors, in making that statement I don't want to force the argument on the Court.

[fol. 298] Judge Hunsicker: I realize that.

Mr. Knee: I am just giving you the gist of our conversation this morning.

Mr. Previat: Does the Court see any merit to the suggestion that perhaps after the submission of briefs, oral argument might be of value to the Court, to answer any question which might arise after the Court has had an opportunity to study the briefs?

Judge Hunsicker: As Judge Doyle says, if we had briefs, we would understand argument much better.

Mr. Previat: I thought that perhaps it might be helpful to the Court to have the briefs, and then if we could then come and answer whatever questions the brief might raise in the Court's mind, or clarify whatever part of the brief might appear to be obscure to the Court.

Judge Stevens: That situation would have been obviated in this Court had it not been for the fact that the present

rule with reference to the filing of briefs on law and fact appeals was not or did not pertain to this case, at the time the case was filed and heard. You are required now to have a trial brief filed in this court at the time of your presentation of the case here.

Mr. Previant: It surely would have been helpful if that had been done.

Judge Stevens: That had not been the case heretofore. The court would be in a position where it could have studied the usual briefs, then I think it would be in a position to [fol. 299] understand a little more intelligently perhaps the purport of your argument.

Judge Hunsicker: Let's leave it that way. We will have oral argument when the briefs have been submitted to us, rather than have the oral argument today. What time do you want to file briefs? Yours is the first brief.

Mr. Denlinger: We will comply with the rule, Your Honor.

Judge Hunsicker: How soon can you file your brief?

Mr. Denlinger: I'd say three weeks would be ample, or less than that, if Your Honors think it should be.

Judge Hunsicker: You are the appellant, of course, here, and actually your briefs should come first, in law and fact cases the plaintiff has the burden of going forward because it is a totally new case theoretically. How much time do you want after they have submitted theirs?

Mr. Previant: We wouldn't need more than two weeks, because we will work ahead on ours right away. All we would be required to do is to add to our brief whatever answer may be required to Mr. Denlinger's brief.

Judge Hunsicker: March 13th for Mr. Denlinger's brief, which is three weeks from today. Two weeks beyond that is March 27th.

Mr. Previant: Mr. Kneel calls my attention that in view of the distances between Akron and Milwaukee, we might have some difficulty in correlating the different parts of the brief.

[fol. 300] Judge Hunsicker: April 3rd then, which would make another week beyond that. If you want a reply brief, if there is any necessity for filing a reply brief, another week.

Mr. Denlinger: That will be ample, Your Honor. I think we have tried to cover this very carefully in the lower court. It would be a necessity of bringing things to date.

Judge Hunsicker: When the briefs are in, we will set a time, contacting your local counsel. Very well, so far as this portion of the case is concerned, it is concluded. We will have further matters when the briefs are in and we have had a chance to study them, and that probably will be some time the latter part of May.

Mr. Knee: All right, Your Honor, that sound very good.

(At which time, court was adjourned.)

[fol. 301]

COURT'S EXHIBIT 1

Aug. 31, 1956

Max Rabl
276 Lake St.
Akron, Ohio

Dear Sir:

As a result of the recent decision of the Common Pleas Court for Summit County, involving the status of owner-drivers and fleet owners under Ohio Law and the CENTRAL STATES AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT, some question has arisen with respect to whether or not the drivers of tractors which are leased by fleet owners to Certified Carriers are employees of the fleet owners or of the Certified Carriers. The Union, of course, has taken the position that the drivers are the employees of the Carriers. On the other hand, some Carriers and fleet owners have taken the position that such drivers are employees of the fleet owners. It is our understanding that you, as a fleet owner, take such position.

Since it now appears that some time will elapse before such differences of opinion are resolved, we believe it necessary to take affirmative steps to protect the position of our members who drive the equipment which you lease to

some carriers. Those drivers should not be required to continue indefinitely without the full protection of a written collective bargaining agreement which establishes their wages, hours, and working conditions.

Therefore, we request that you enter into collective bargaining with us for the purpose of negotiating a contract for those drivers who drive your equipment in the service of the Certified carriers.

Please advise when it will be convenient for you to meet with us. We would appreciate an answer within one week from the date of this letter.

Very truly yours,

Kenneth A. Burke
President
Local Union #24

KAB:fm

[fol. 302]

COURT'S EXHIBIT 2

LAW OFFICE
STANLEY DENLINGER

First National Tower
Akron 8, Ohio
BL. 3-7116

September 7, 1956

Mr. Kenneth A. Burke, President
Local Union No. 24
727 Grant Street
Akron, Ohio

My dear Mr. Burke:

Your letter of August 31, 1956 to Mr. Max Rabl, 276 Lake Street, Akron, Ohio, regarding his entering into negotiations for a contract covering his employees has been referred by him to me for reply.

I assume from the contents of your letter that you now admit or claim that the men who work for Mr. Rabl are his employees and not the employees of A.C.E. Transportation Company. Of course, if it is still your claim that they are employees of A.C.E., I can not advise Mr. Rabl to attempt to negotiate for and in behalf of the employees of A.C.E.

If, on the other hand, your position is that the men are Mr. Rabl's employees, we must both conduct ourselves in accordance with the Labor-Management Act. We think, therefore, that before we go into the matter contract-wise, it will be necessary for you to obtain a certification by way of election from the National Labor Relations Board, which would fulfill the requirements of the law and furnish both of us a protection otherwise not available.

We shall await such notification after an election from the Board.

Sincerely,

(signature)

Stanley Denlinger

SD;bmr

[fol. 303]

COURT'S EXHIBIT 3

November 5, 1956

Mr. Stanley Denlinger
Attorney-at-Law
First National Tower
Akron 8, Ohio

Dear Sir:

Your letter of September 7th, 1956 addressed to Mr. Kenneth A. Burke, President of Teamsters' Union Local No. 24, was referred to us for answer. Our delay in answering was, of course, due to the fact that the final journal entry in the Revel Oliver lawsuit had not yet been made.

Now that such Entry has been made, it is obvious that, at least pending the appeal and a possible reversal of such

decision, Teamsters' Union Local No. 24 is precluded from attempting any negotiations with A.C.E. Transportation Company.

In view of that circumstance our client has no choice but to consider those drivers the employees of Mr. Rabl, at least until such time as there may be a contrary determination by the courts.

We, therefore, renew our client's request that Mr. Rabl enter into negotiations for a contract covering those drivers.

Insofar as you suggest that an election be conducted by the National Labor Relations Board for the purpose of determining whether a majority of such drivers have designated Local Union No. 24 as their collective Bargaining agent, it is the feeling of our client that inasmuch as virtually all of such drivers have designated the Union as their bargaining agent for many years, and still do, no useful purpose will be accomplished by going through the election procedures of the National Labor Relations Board.

We would appreciate it, therefore, if you will advise whether your client, Mr. Rabl, is now prepared to recognize the Union as the bargaining agent, and to negotiate a contract with the Union.

[fol. 304] Failing to hear from you within the next five days we shall assume that your client is not willing to meet and bargain with Truck Drivers' Local Union No. 24, AFL-CIO at this time.

Very truly yours,

(signature) CAB

Robert C. Knee, General
Counsel for the Ohio
Conference of Teamsters

RCK:cab

cc: Mr. Kenneth A. Burke
Mr. Bruce B. Laybourne
Mr. David Previant

[fol. 305]

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

No. 4679

Argued May 16, 1957

REVEL OLIVER, ETC., Appellee,

v.

ALL-STATES FREIGHT, INC., et al., A.C.E. TRANSPORTATION
Co., INC., et al., Appellees,

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS, ETC., et al.,
Appellants.

OPINION—Decided August 7, 1957

Appeal on Questions of Law and Fact

Stanley Denlinger, For Appellee Revel Oliver, etc.

Brouse, McDowell, May, Bierce & Wortman, For Appellees A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc.

David Previant, Robert C. Knee, and Bruce Laybourne, For Appellants.

[fol. 306] DOYLE, J.

This is an action brought by Revel Oliver, the owner of tractors and trailers, each of which is under a lease agreement with one or the other of the two appellee companies—A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc.—which are common carriers engaged in transporting freight for hire by motor equipment on the highways of this and other states under certificates of convenience and necessity issued by the Interstate Com-

merce Commission and the Public Utilities Commission of Ohio; the other original defendants, with the exception of the appellants in this court, having been dismissed by plaintiff in the trial court.

The purpose of the action is to restrain the appellee carriers, the appellant Union (Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America), and the appellant Kenneth Burke, as president and business agent of said Local 24, from enforcement of a contract entered into by them, which it is claimed would supersede the owner-operator and carriers' existing lease agreement, and would restrict trade and create a monopoly in the business of leasing equipment, in violation of Sec. 1331.01, R.C., et seq. (Valentine Act).

The defendant Union asserts that the sole jurisdiction is in the National Labor Relations Board; that if any violation of law exists, it is a violation of the Federal [fol. 307] Antitrust Laws, rather than the state laws; and that the matter is one falling within the field of collective bargaining and other legitimate fields of agreement between employer and employee.

The plaintiff states that:

" * * * we are not here concerned with a labor dispute. Nor do we seek an interpretation of, nor attempt an assault upon, the agreement as it deals with the wages and conditions of employees of the carriers, nor the right of the union and carriers to negotiate and execute a collective bargaining contract covering the subject matter which is within their field to negotiate.

"Our problem here is, May the carriers and Union fix by agreement the price to be charged for the use of and the supervision of the trucks and trailers used in the trucking business, owned by individuals who lease the equipment to the carriers. This and nothing else is here involved."

The subject of the controversy is Article 32 of the contract between the Union and the carriers, which became effective during the life of leases between the owner-operator and the carriers. The provisions are:

"Owner-Operators

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

"(Note: Whenever 'owner-operator' is used in this article, it means 'owner-driver' only, and nothing in [fol. 308] this article shall apply to any equipment leased except where owner is also employed as a driver.)

"Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment must be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the

minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such cases all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

[fol. 309] "Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances [fol. 310] for drivers as embodied elsewhere in this Agreement.

"(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per Mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispached from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimum established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

[fol. 311] "Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent

or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of a formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised [fol. 312] by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to ARTICLE X.

"Section 19 (a). The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will

be promptly heard and decided with the specific purpose in mind of

(1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

“(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work

covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time."

This contract, of which Article 32, set forth above, is a part, is known as the Central States Area Over-the-Road Motor Freight Agreement, with Ohio Rider. It has generally been adopted by common carriers and locals of the parent Union throughout twelve central states. It contracts for 3,000 to 3,500 carriers and 40,000 to 50,000 employees. In Ohio it covers approximately 500 carriers and 6,000 employees. Approximately 5 to 10 percent of these employees are owner-operators.

[fol. 314] A principal question raised by the Union is whether this state court has jurisdiction to enjoin the enforcement of the contract, or whether its jurisdiction has been preempted by authority granted the National Labor Relations Board.

The Court of Common Pleas of Summit County found that such jurisdiction was vested in the state courts, and enjoined, pursuant to trial, the enforcement of the contract, on the theory that it violated the state statutes governing monopolies and restraints of trade. This court, now entertaining an appeal for trial de novo from the judgment there entered, must determine the issues there adjudicated.

From the record, we find that the controversial agreement was entered into following a strike, called to induce the carriers to contract with the Union, and that the contract so executed infringed upon and superseded many of the provisions of an existing contract between the plaintiff and the carriers.

It is not the purpose of this court to write at length on the legal questions presented, as would perhaps be our duty if we were hearing the case on questions of law, thereby examining the record for error of the trial court. In this appeal, this court is a trial court, and we are called upon to determine questions of fact.

It is also necessary to examine, with diligence, the law [fol. 315] necessarily involved, and to apply it to the facts found to exist. The hundred and more cases cited and

analyzed by counsel are well known to the lawyers in the case. We will not repeat them here.

In determining the jurisdiction of this court, we first observe that the subject matter of the litigation falls within the powers of the state courts, unless federal statutes enacted pursuant to the commerce clause of the Constitution of the United States intend to supersede or suspend the exercise of the reserved powers of the states. *Illinois Central Rd. Co. v. State Public Utilities Comm. of Illinois*, 245 U. S. 493, at p. 510, 62 L. Ed. 425.

We find no federal statute ordering, nor in fact any federal case which holds, that the federal government retains exclusively to itself the right to remedy the evils resulting from contracts and agreements between interstate carriers and Unions found to be in restraint of trade. Federal legislation does not occupy the entire field, to the exclusion of state laws. We further do not find that we are met with a labor dispute, unfair labor practice, right to collective bargaining, or any other right arising under the labor laws of the federal government, of which the right of adjudication has been exclusively retained by the federal government acting through any of its agencies.

On the question of jurisdiction, we find and hold that, [fol. 316] if it be found that the contract before us, in connection with the established facts, is counter to this state's public policy as pronounced in its antitrust laws, this court has jurisdiction to restrain such conduct, because it falls within a field open to state regulation, even though its effect falls upon litigants involved in interstate commerce.

Upon the basis of the allegations in the pleadings and the proof adduced, we find that the petitioner, an independent contractor, to the extent that he leases motor vehicles to carriers, rather than an employee under the federal statutes, could not have presented his grievances to the National Labor Relations Board. There is nothing in the National Labor Relations Act, as amended by the Labor Management Relations Act (Taft-Hartley Act), which would give the petitioner herein such right.

As is indicated above, this court rejects the claim of lack of jurisdiction of this court to adjudicate the issues; and, after so ruling, we now proceed to examine the right

of the petitioner to injunctive relief, because, as heretofore stated, the subject matter of the litigation falls within the powers of the state courts.

The public policy of this state in respect to monopoly and restraints of trade is set forth in Sec. 1331.01, R. C., et seq. The first-named statute, in so far as here applicable, is:

"As used in sections 1331.01 to 1331.14, inclusive, of the Revised Code:

"

"(B) 'Trust' is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

"(1) To create or carry out restrictions in trade or commerce;

"(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;

"(3) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity;

"(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state;

"(5) To make, enter into, execute or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves and others, so as directly to preclude a free and un-

restricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected.

"A trust as defined in division (B) of this section is unlawful and void."

It has been heretofore observed that the appellee Oliver has his equipment under lease to the carriers. It was a [fol. 318] lease entered into through a voluntary agreement between the carriers and him. That the contract between the carrier and the Union would supersede and nullify many of the items of his contract is not open to dispute.

The carrier-Union contract may be succinctly said to be one which fixes the price to be charged for the use and supervision of the trucks and trailers used in the trucking business, owned by individual persons who lease their equipment to the carriers.

It is the judgment of this court that such an agreement, and the consequences inevitably following therefrom, if the contract were allowed to stand, is squarely in conflict with the public policy of this state as reflected in Sec. 1331.01, R. C., et seq.

We have been favored with a careful analysis of this case made by Judge Colopy, the trial judge in the court below. We accept his reasoning as sound, and, by reference, make his opinion a part of this one. We further note the similarity of basic principles between the instant case and *State, ex rel. Cullitan, v. Greater Cleveland Livery Owners Assn., et al.*, 74 N. E. 2d 104.

Judge McNamee, in the *Cullitan* case, has with rare ability discussed the principles of law involved in this case. We make especial reference to the opinion there rendered.

In conclusion we summarize:

[fol. 319] 1. This court has jurisdiction of both the parties and the subject matter.

2. Article 32 of the contract, here the subject matter of the litigation, is in violation of Sec. 1331.01, R. C., et seq., and, by virtue of Sec. 1331.06, R. C., is void and unenforceable.

3. A permanent injunction will be entered of like character to that entered in the Court of Common Pleas.

Hunsicker, P.J., and Stevens, J., concur.

[fol. 320]

IN THE COURT OF APPEALS FOR THE
NINTH JUDICIAL DISTRICT

[Title omitted]

JOURNAL ENTRY OF JUDGMENT AND ORDER—
Filed September 30, 1957

1. This cause came on to be heard upon the appellee's amended petition, the answers of the appellees, A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., and appellants Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and Kenneth Burke, the President and Business Agent for Local No. 24, upon the evidence, the briefs and arguments of counsel for all parties and after due and careful consideration the Court finds:

2. (a) At the time leases for the rental of plaintiff appellee's motor equipment were in full force and effect between plaintiff appellee and defendants appellees, A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc., the Union and A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc., executed a contract, the provisions of Article 32 thereof being as follows:

"Owner-Operators

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to

[fol. 321] operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

“(NOTE: Whenever ‘owner-operator’ is used in this article, it means ‘owner-driver’ only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

“Section 2. This type of operator’s compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

“Section 3. Certificate and title to the equipment must be in the name of the actual owner.

“Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

“Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

“Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver’s wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such cases all

[fol. 322] monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge on earned money advanced prior to the regular pay day.

[fol. 323] "Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

"(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispached from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half ($\frac{1}{2}$) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to lease equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not [fol. 324] include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carry-

ing out of any plan, scheme or device to circumvent [fol. 325] or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to ARTICLE X.

"Section 19(a) The use of individual owner-operators shall be permitted by all certificated or permitted [fol. 326] carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-

Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

- (1) protecting provisions of the Union contract;
- (2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;
- (3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (article XXXIII) in the original 1945-47 Over-the-Road contract;
- (4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;
- (5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;
- (6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

“(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces [fol. 327] of equipment under lease agreement, but

such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time."

2. (b) Plaintiff appellee is an independent contractor.

(c) Article 32 of the contract is not within the protection provided by Section 157 of the Labor Management Relations Act of 1947.

(d) Article 32 squarely is in conflict with the public policy of the State of Ohio as reflected in Sec. 1331.01 R.C. et seq. and is void and unenforceable.

(e) The plaintiff-appellee will be injured if the defendants-appellants carry out the provisions of Article 32;

(f) The plaintiff-appellee has no remedy under the Labor Management Relations Act or any other federal legislation;

(g) Jurisdiction in the state court exists; and

(h) It is the duty of this court to exercise its powers to restrain the defendants-appellants from enforcing the terms of Article 32.

3. It is therefore Ordered, Adjudged and Decreed:

(a) That the defendants-appellees, A.C.E. Transportation A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and each of them, their agents, representatives and successors or persons, acting, by, through or for them, or in concert with each other, are hereby perpetually restrained and enjoined from entering into any agreements one with the other or carrying out the effects, requirements or terms of any such agreement, which will require the [fol. 328] alteration, cancellation or violation of plain-

tiff-appellee's existing lease or leasing agreement or any such agreement hereafter renewed or renegotiated and entered into, and

(b) That the defendants-appellees, A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successor of each and those acting in concert with said defendants-appellees and appellants are hereby perpetually enjoined and restrained from entering into any combination, arrangement, agreement or stipulation in the future, or the negotiation therefor, the purpose, intent or tendency of which is to fix or determine in any manner the rate to be charged for the use of plaintiff's equipment, leased by said plaintiff-appellee to the defendants-appellees, A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc., and

(c) That the said defendants-appellees, A.C.E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successors of each are hereby perpetually enjoined from giving force and effect to Section 32 of the Contract between them as is fully set forth in this Court's finding, or any modification or alteration thereof, the import, effect or tendency of which shall attempt to fix the rates and the use of plaintiff-appellee's equipment or to fix or determine the return for plaintiff-appellee's capital investment in said equipment.

4. To all of which finding, judgment and order, the defendants-appellants and Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and

Helpers and Kenneth Burke, President and Business Agent [fol. 329] for Local No. 24 are granted proper exceptions.

Approved:

Oscar Hunsicker, Judge.

Stanley Denlinger, Attorneys for Plaintiff.

Charles R. Iden, Attorneys for A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc.

David Pieviant, (sic) Robert C. Knee, Bruce B. Laybourne, Attorneys for Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of Local No. 24.

[File endorsement omitted]

[fol. 330]

IN THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT

[Title omitted]

MOTION FOR A NEW TRIAL OF DEFENDANTS-APPELLANTS, LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, AND KENNETH BURKE
—Filed September 30, 1957

Now come the Defendants-Appellants, Local 24 Of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Kenneth Burke, and move the Court for a new trial for the following causes:

1. That the final order and judgment of this Court is not sustained by sufficient evidence.
2. That the final order and judgment of this Court is contrary to law.
3. That errors of law apparent on the face of the record occurred at the trial of this cause.

Respectfully submitted,

David Pieviant, (sic) Robert C. Knee, Bruce B. Laybourne, Attorneys for Local 24 Of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Kenneth Burke.

[File endorsement omitted]

[fol. 331]

IN THE COURT OF APPEALS FOR THE NINTH JUDICIAL DISTRICT

[Title omitted]

JOURNAL ENTRY RE ORDER OVERRULING MOTION FOR NEW TRIAL, ETC.—Filed November 8, 1957

1. This cause came on to be heard upon the motion for a new trial, in behalf of Defendants-Appellants Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L.-C.I.O. and Kenneth Burke and upon objections to the wording of the journal entry; and upon consideration of the briefs and arguments of counsel for all parties the Court finds:

2. The objections to the journal entry and the motion for a new trial are not well taken, and the same are hereby overruled. The oral motion of Appellants to introduce the record of testimony taken in N.L.R.B. Case 8-00-51, Local No. 24 International Brotherhood of Teamsters, etc. of America, AFL-CIO, et al., and A.C.E. Transportation Co., is denied. Appellants except.

Oscar Hunsicker, Presiding Judge—For the Court

Approved:

Stanley Denlinger, Attorney for Plaintiff-Appellee

Charles R. Iden, Attorney for A.C.E. Transportation Co., Inc., and Interstate Truck Service, Inc.

David Previant

Robert C. Knee

Bruce B. Laybourne

[File endorsement omitted].

[fol. 332]

IN THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT

[Title omitted]

NOTICE OF APPEAL TO SUPREME COURT OF OHIO—

Filed November 25, 1957

The above named Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Kenneth Burke, defendants and appellants, hereby give notice of appeal to the Supreme Court of Ohio from the judgment rendered by the Court of Appeals in the above-entitled cause on the 30th day of September, 1957, and the judgment overruling defendants' and appellants' motion for a new trial rendered on the 8th day of November, 1957.

Said appeal is on questions of law and is taken to the [fol. 333] Supreme Court of Ohio:

- a. In a case involving a constitutional question;
- b. On condition that the motion to certify be allowed by the Supreme Court of Ohio.

David Previant, 212 West Wisconsin Avenue, Milwaukee 3, Wisconsin.

Robert C. Knee, Winters Bank Building, Dayton 2, Ohio.

Bruce B. Laybourne, 621 Second National Building, Akron 8, Ohio.

By /s/ Bruce B. Laybourne, Attorneys for Appellants, Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Kenneth Burke, 621 Second National Building, Akron 8, Ohio.

Receipt of Notice (omitted in printing).

[File endorsement omitted]

[fol. 334]

IN THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT

[Title omitted]

PRAECIPE—Filed November 25, 1957

To the Clerk:

Please prepare a transcript of the original papers in the above entitled cause and forward same to the Supreme Court of Ohio.

/s/ Bruce B. Laybourne, Attorney for Appellants,
Local 24 of the International Brotherhood of Team-
sters, Chauffeurs, Warehousemen and Helpers of
America, AFL-CIO, and Kenneth Burke.

[File endorsement omitted]

[fol. 335]

IN THE COURT OF APPEALS OF SUMMIT COUNTY

No. 196714

Court of Appeals No. 4679

Supreme Court of Ohio No. 35454

REVEL OLIVER, Appellee,

vs.

ALL STATES FREIGHT, INC., et al., 1250 Kelly Avenue, Akron,
Ohio, A. C. E. TRANSPORTATION COMPANY, 241 James
Street, Akron, Ohio, INTERSTATE TRUCK SERVICE, INC.,
Defendants,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS LOCAL #24, 348 E. South
St., Akron, Ohio, KENNETH BURKE, 349 E. South St.,
Akron, Ohio, Defendants-Appellants.

SUPPLEMENTAL TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES
FROM COURT OF APPEALS AND OHIO SUPREME COURT

October 15, 1956.

Notice of Appeal filed.

October 15, 1956.

Precipe filed.

February 11, 1957.	September 1957 Term continued to February 1957 Term.
September 16, 1957.	February 1957 Term continued to September 1957 Term.
September 30, 1957.	Journal Entry filed. September Term. Hon. Oscar Hunsicker, J. Jl. 12-386
September 30, 1957.	Motion for a New Trial filed.
November 8, 1957.	Journal Entry filed. September Term. Opinion, Hunsicker, P. J. and Stevens, J. concur.
November 25, 1957.	Notice of Appeal to Supreme Court of Ohio filed.
November 25, 1957.	Precipe filed.
February 6, 1958.	Motion for an Order Directing the Court of Appeals of Summit County to Certify its Record. It is ordered by the Court that this motion be, and the same hereby is, overruled.
[fol. 336]	
	Costs: Motion Fee, \$20.00, paid by B. Laybourne.

I, Elliott E. Welch, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the records of said Court, to-wit: from Journal No. 42 Page

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 5th day of February A.D. 1958.

Elliott Welch, Clerk, Ohio Supreme Court.

(SEAL)

February 6, 1958.

Journal Entry filed. Ohio Supreme Court. January Term A. D. 1958.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, Upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel. On consideration whereof, it is ordered and adjudged that said appeal is, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellants his costs herein expended, taxed at \$

Ordered, That a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of Court of Appeals of Summit County, "for entry".

I, Elliot E. Welch, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal Entry of said Court.

Witness my hand and the Seal of said Court, this 5th day of February 1958.

Elliot E. Welch, Clerk.

(SEAL)

THE SUPREME COURT OF OHIO

The State of Ohio
City of Columbus

To the Honorable Court of Common Pleas, within and for the County of Summit, Akron, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of the Supreme Court of Ohio, in the cause of Revel Oliver, Plaintiff-Appellee vs. A. C. E. Transportation Co., Inc., et al., Local 24 of the International Brotherhood of Team-

sters, Chauffeurs, Warehousemen and Helpers of America, et al., Defendants-Appellants, into execution.

Witness, Elliot E. Welch, Clerk of the
Supreme Court of Ohio, this 5th day of February A. D. 1958.

Elliot E. Welch, Clerk.

(SEAL)

[fol. 337] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 339] [File endorsement omitted]

IN THE SUPREME COURT OF OHIO
Case No. 35454

REVEL OLIVER, Plaintiff-Appellee,

—v.—

A.C.E. TRANSPORTATION Co., INC.,

and

INTERSTATE TRUCK SERVICE, INC.

and

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
AFL-CIO and KENNETH BURKE, President and Business
Agent of Local 24, Defendants-Appellants.

PRAECIPE—Filed March 26, 1958

To the Clerk of the Supreme Court of Ohio:

Please prepare and certify a Transcript of Record in the above entitled cause of all pleadings and records in your possession for submission of this cause to the Supreme Court of the United States.

Please forward same to: Mr. Bruce B. Laybourne, Attorney at Law, 621 Second National Building, Akron 8, Ohio.

David Previant, 212 W. Wisconsin Avenue, Milwaukee 3, Wisconsin; Robert C. Knee, Winters Bank Building, Dayton 2, Ohio; Bruce B. Laybourne, 621 Second National Building, Akron 8, Ohio; by /s/ Robert C. Knee, Attorneys for Defendants-Appellants, Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

[fol. 340]

IN THE SUPREME COURT OF OHIO

MEMORANDA OF PLEADINGS &C., FILED, WRITS ISSUED, &C.
JUDGMENTS, ORDERS AND DECREES

Date

- | | |
|---------------|---|
| Nov. 26, 1957 | Notice of Appeal and proof of service filed. |
| Dec. 2, 1957 | Court of Appeals Transcript of Docket and Journal entries, and Original Papers filed. |
| Dec. 4, 1957 | Motion to Certify Record and proof of service filed. |
| Dec. 14, 1957 | Appellants printed brief filed. 12/16/57. Proof of Service filed. |
| Dec. 29, 1957 | Non-printed brief of Defendants, A.C.E. Transportation Company Inc. et al., filed. 1/6/58 Affidavit of service filed. |
| Dec. 29, 1957 | Non-printed brief of appellee, Revel Oliver filed. 1/2/58 Proof of service filed. |

[fol. 341]

- | | |
|---------------|--|
| Jan. 10, 1958 | Motion by Appellee to dismiss appeal as of right and affidavit of service filed. |
| Jan. 29, 1958 | Motion by Appellee to Dismiss Appeal as of Right, Sustained, Journal 42, page 489. |

- Jan. 29, 1958 Motion for an order Directing the Court of Appeals of Summit County to Certify its Record, Overruled, Journal 42 page 489.
- Jan. 29, 1958 Dismissed, No Debatable Constitutional Question Involved. Journal 42, page 492.
- Feb. 5, 1958 Certified copy of entry sent clerk.
- Feb. 5, 1958 Mandate issued.
- Feb. 5, 1958 Original Papers sent to Clerk.
- Mar. 26, 1958 Praeipce for Transcript of Record to U. S. Supreme Court Filed.

JOURNAL ENTRIES

Journal 42, page 489

Motion by Appellee to Dismiss Appeal Filed as of Right, Summit County:

It is ordered by the Court that this motion be, and the same hereby is, sustained.

Journal 42, page 489

Motion For an Order Directing the Court of Appeals of Summit County to Certify Its Record.

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Journal 42, page 492.

Appeal From the Court of Appeals of Summit County.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, upon the motion of the Appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellants his costs herein expended, taxed at \$.....

Ordered, That a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Summit County, "for entry".

[fol. 342]

IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL—Filed November 26, 1957

The above named Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America AFL-CIO, and Kenneth Burke, defendants and appellants, hereby give notice of appeal to the Supreme Court of Ohio from the judgment rendered by the Court of Appeals in the above-entitled cause on the 30th day of September, 1957, and the judgment overruling defendants' and appellants' motion for a new trial rendered on the 8th day of November, 1957.

Said appeal is on questions of law and is taken to the Supreme Court of Ohio:

- a. In a case involving a constitutional question;
- b. On condition that the motion to certify be allowed by the Supreme Court of Ohio.

David Previant, 212 West Wisconsin Ave., Milwaukee 3, Wisconsin; Robert C. Knee, Winters Bank Bldg., Dayton 2, Ohio; /s/ Bruce B. Laybourne, 621 Second National Bldg., Akron 8, Ohio, Attorneys for Appellants, Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Kenneth Burke

Duly Acknowledged.

[fol. 343]

IN THE SUPREME COURT OF OHIO

MOTION TO CERTIFY—Filed December 4, 1957

Now come Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America AFL-CIO, and Kenneth Burke, two of the defendants below and appellants herein, and show the Court that on the 30th day of September, 1957, in an appeal on questions of law and fact in the Court of Appeals of Summit County, Ohio, known as Cause Number 4679, wherein Revel Oliver was appellee, the Court rendered a judgment for said appellee, and on the 8th day of November, 1957 rendered a judgment overruling appellants' motion for a new trial.

These appellants have seasonably filed in the Court of Appeals and in this Court a Notice of Appeal from the judgments referred to above.

These appellants say that error prejudicial to them has intervened in the Court of Appeals wherein it entered judgment against said appellants and overruled said appellants' motion for a new trial and that the cause presents questions of public and great general interest.

Wherefore, appellants make application for an order directing the Court of Appeals of Summit County, Ohio to certify its record to the Supreme Court of Ohio.

[fol. 344]

David Previant, 212 West Wisconsin Ave., Milwaukee 3, Wisconsin; Robert C. Knee, Winters Bank Bldg., Dayton 2, Ohio; /s/ Brue B. Laybourne, 621 Second National Bldg., Akron 8, Ohio, Attorneys for Appellants, Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Kenneth Burke, 621 Second National Bldg., Akron 8, Ohio.

Duly Acknowledged.

[fol. 345]

IN THE SUPREME COURT OF OHIO

ASSIGNMENT OF ERRORS—Filed December 14, 1957

1. The Court erred in asserting jurisdiction under state law in violation of Article VI, Section 2, and Article I, Section 8, Clause 3 of the United States Constitution.

2. The Court erred in asserting jurisdiction to construe the National Labor Relations Act, 61 Stat. 136, 29 U. S. C. A., sec. 141, et seq.

3. The Court erred in its construction of the National Labor Relations Act by holding that the plaintiff (a member of the defendant union), while he is actually driving his truck in the service of the defendant common carriers covered by contract with Appellants, is an "independent contractor" and not an "employee" within the meaning of Section 2, subsection 3 (29 U.S.C.A., sec. 152 (3)) of the Act.

4. The Court erred in its construction of the National Labor Relations Act by holding that the provisions of Article XXXII of the Central States Area Over-the-Road Motor Freight Agreement with Ohio Rider (hereinafter sometimes called only "Article XXXII") are not appropriate subjects for collective bargaining under the federal law, and that Article XXXII is not protected from contrary state legislation by section 7 (29 U.S.C.A., sec. 157) of the National Labor Relations Act.

5. The Court erred in holding that the Ohio Antitrust Act (Revised Statutes of Ohio, Section 1331.01, also called the Valentine Act) which contains no express exception for labor unions, could be constitutionally applied to limit or prohibit certain provisions of collective bargaining agreements negotiated in industries which affect interstate commerce.

6. The Court erred in its construction of the Ohio Antitrust Act (Revised Statutes of Ohio, Section 1331.01) by holding that the provisions of Article XXXII was a conspiracy to fix prices within the meaning of the Antitrust act.

[fol. 346] 7. The Court erred in holding that Article XXXII of the contract in its entirety, was void; and that it is void even when applied to other truck drivers not before the Court who own and operate their own truck.

8. The Court erred in denying Appellants motion to incorporate into this record the record of proceedings before the National Labor Relations Board which involves the same issues of federal law which are now before this Court.

9. The Court erred in asserting jurisdiction to regulate an alleged restraint of trade in the motor transportation industry.

Duly Acknowledged.

[fol. 347]

IN THE SUPREME COURT OF OHIO

MOTION BY APPELLEE TO DISMISS APPEAL AS OF RIGHT—
Filed January 10, 1958

Now comes Revel Oliver, plaintiff-appellee, and moves the Court to dismiss the appeal as of right filed herein for the reason there is no debatable constitutional question involved in this proceeding.

/s/ Stanley Denlinger, Attorney for Plaintiff-Appellee.

Duly Acknowledged.

[fol. 348]

IN THE SUPREME COURT OF THE STATE OF OHIO

[Title omitted]

ORDER DENYING MOTION TO CERTIFY RECORD—
January 29, 1958

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Clerk's certificate to foregoing paper (omitted in printing).

[fol. 349]

IN THE SUPREME COURT OF OHIO

ORDER DISMISSING APPEAL AS OF RIGHT—January 29, 1958

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal is, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adnūdged (sic) that the appellee recover from the appellants his costs herein expended, taxed at \$.....

Ordered, That a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of Court of Appeals of Summit County, "for entry".

I, Elliot E. Welch, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal Entry of said Court.

Witness my hand and the Seal of said Court, this 5th day of February 1958.

Elliot E. Welch, Clerk.

(Seal)

IN THE SUPREME COURT OF OHIO

The State of Ohio
City of Columbus

To the Honorable Court of Common Pleas, within and for the County of Summit, Akron, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of the

Supreme Court of Ohio, in the cause of Revel Oliver, Plaintiff-Appellee vs. A.D.E. Transportation Co., Inc., et al., Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al., Defendants-Appellants, into execution.

Witness, Elliot E. Welch, Clerk of the Supreme Court of Ohio, this 5th day of February A.D. 1958.

Elliot E. Welch, Clerk.

(Seal)

[File endorsement omitted]

[fol. 350]

IN THE SUPREME COURT OF OHIO

Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 351]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—May 26, 1958

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio and the Court of Appeals of the State of Ohio, Ninth Judicial District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.